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Report to the Mississippi Legislature  
**A Review of the Mississippi State  
Board of Cosmetology**

#665  
December 15, 2021



## **PEER: The Mississippi Legislature's Oversight Agency**

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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On December 15, 2021, the PEER Committee authorized release of the report titled *A Review of the Mississippi State Board of Cosmetology*.

A handwritten signature in black ink, appearing to read "Timmy Ladner".

Representative Timmy Ladner, Chair

**This report does not request increased funding or additional staff.**



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## A Review of the Mississippi State Board of Cosmetology

**CONCLUSION:** The Mississippi State Board of Cosmetology (MSBC) regulates schools, salons, and individuals engaged in the teaching, demonstration, and practices of cosmetology, manicuring, and esthetics. MSBC experiences several issues that decrease the effectiveness and efficiency of the Board: issues with Board composition, structure, and responsibilities, issues with regulatory activities, issues with financial management and controls, and other administrative issues. Additionally, the overlap in the scopes of practice regulated by MSBC and the Mississippi Board of Barber Examiners is significant and makes differentiating between the jurisdictions of the two boards difficult.

### Background:

MISS. CODE ANN. § 73-7-1 (1972) establishes MSBC. MSBC is composed of five members appointed by the Governor with the advice and consent of the Senate. As of October 1, 2021, MSBC had nine full-time staff members.

MSBC is a special fund agency supported by funds collected from licensing, inspection, and examination fees and fines collected for disciplinary actions as set forth in MISS. CODE ANN. § 73-7-29 (1972). From FY 2019 to FY 2021, the Board's expenditures increased from approximately \$580,000 to \$884,000, an increase of 52%.

The nature of cosmetology presents a risk to the public if practitioners are not properly trained and regulated. Risks include transmission of communicable disease or infection and physical harm resulting from improper use of equipment. Because of these risks, all states regulate the practice of cosmetology.

### Licensed Schools, Salons, and Practitioners in Mississippi (as of October 12, 2021)

License Type	# of Licenses
Schools	43
Salons	4,602
Practitioners	
<i>Cosmetologists</i>	15,389
<i>Manicurists</i>	2,438
<i>Estheticians</i>	805
<i>Instructors (Cosmetology)</i>	367
<i>Instructors (Manicuring)</i>	8
<i>Instructors (Esthetics)</i>	10
<b>Total Practitioners</b>	<b>19,017</b>

### MSBC Issues

- MSBC, in its current form, does not ensure Board representation of consumers or all Board-licensed persons;
- Board member terms are not staggered and qualifications for Board service are higher than those of similar boards;
- MSBC Board members are involved in day-to-day responsibilities that should be handled by the staff;
- MSBC's meetings are disorganized and inefficient;
- On 10 occasions in FY 2021, a quorum of the Board met but did not provide meeting minutes;
- Universal licensing requirements create an imbalance between in- and out-of-state license applicants, resulting in a competitive disadvantage for Mississippi residents;
- In FY 2021, MSBC completed only 63% of its mandated inspections and is unlikely to finish inspections in FY 2022 due to current staffing levels;
- Inspectors give warnings to licensees for most first-time violations, contravening the Board's rules and regulations;
- MSBC does not have a consistent complaints investigation process and does not schedule a regular, standard time to hold hearings;
- MSBC maintains a large cash balance while continuing to collect fees and fines from licensees;
- MSBC has not assessed its own efficiency in the operation of inspector vehicles to maximize its financial resources;
- Weaknesses in the Board's segregation of duties compromise MSBC's accounting records;
- MSBC Board member policies for claiming per diem, meals, and travel reimbursements are inconsistent and insufficient for expanding public funds in a cost-effective and prudent manner; and,
- Administrative issues including: the lack of expertise to perform critical Board functions, oversight of Executive Director leave and comp time, and issues related to agency work environment.

### Other Administrative Issues

- Due to a lack of staff, the Board has increasingly relied on contractors to perform several core administrative tasks (e.g., budget development, accounting, IT), which could result in an inefficient use of funds and potentially an over-reliance on contractors to perform critical Board functions.
- From March to September 2021, the Executive Director requested and received 142 hours of comp time without approval by the appointing authority (i.e., the Board) as required by state law. In addition, the Executive Director did not request prior approval for comp time, which is generally accepted practice.
- Over the course of PEER's review of MSBC, it became evident that the Board is operating with personnel conflicts that may jeopardize the future ability of the Board to fulfill its statutory obligations.

### Legislative Recommendations

1. The Legislature should consider amending MISS. CODE ANN. § 73-7-1 (1972) to reduce the Board members' experience requirement from 10 to 5 years, eliminate the age requirement, and restructure and expand the Board's membership. The Legislature should also consider the option of dissolving both the State Board of Cosmetology and the State Board of Barber Examiners, and create a single State Board of Cosmetology and Barbering. If the Legislature creates this board, its composition should reflect representation of all licensed professions.
2. To eliminate the imbalance of licensing requirements for in-state and out-of-state applicants, the Legislature should consider removing the English fluency requirement, reduce the minimum age and education requirements, and allow aspiring practitioners to qualify for licensing examination through apprenticeship hours instead of school hours.
3. To reduce the Board's involvement in the day-to-day operations of the agency, the Legislature should consider formally creating the position of Executive Director within the statute and providing basic direction on the scope of the position's responsibilities.
4. The Legislature should consider amending MISS. CODE ANN. § 25-3-92 (1972) to require the Mississippi State Personnel Board to develop a policy for agencies that hire state service personnel regarding the appropriate process for the requesting, approval, and use of Executive Director compensatory time.

### Board Recommendations

1. The Board should address its deficiencies in core competencies by hiring qualified, full-time staff to accomplish such functions. If MSBC is unable to do so, the Board should consult with the Department of Finance and Administration (DFA) to increase the cost-effectiveness of its operations by determining an alternative solution to its current use of contractors.
2. In order to increase the efficiency of Board meetings, the Board should require the Executive Director to provide meeting materials the week prior to the meeting, begin meetings promptly and complete meeting agenda items in a timely manner, only conduct as many meetings for the amount of time necessary to oversee the management of the Board (not the day-to-day operations of the Board), and formalize and improve the general order of meetings.
3. The Board should review and develop operational policies and procedures that ensure compliance with all open meetings laws and regulations.
4. To achieve its statutory mandate regarding annual inspections, the Board should evaluate inspector territories to factor for travel distance and consider redrawing territories to make inspection quotas more feasible. For better recruitment and retention of inspectors, the Board should provide flexible work schedules to inspectors, as allowed by state law. Additionally, the Board should create a more formal and equitable inspection schedule and increase its number of inspectors to meet the statutory inspection mandate.
5. To increase consistency within the enforcement process, the Board should amend rules and regulations to reflect actual practices, revise policies to ensure uniform processes of investigation, and schedule regular hearings to adjudicate complaints.
6. MSBC should develop plans to expend the licensees' funds held in reserve in a manner effective for the accomplishment of the agency's goals and objectives and for the benefit of its licensees.
7. The Board should consult with DFA to determine whether fleet vehicles would be more cost-effective than mileage reimbursement.
8. The Board should create a written standard procedure for Board members requesting per diem to ensure consistency in the Board's use of funds.
9. The Board should adopt and enforce policies and procedures that strengthen the agency's internal controls over segregation of duties.
10. To ensure transparency and efficient use of public funds, the Board should submit receipts with meal reimbursement requests and ensure that its policies and procedures are in alignment with DFA's travel reimbursement guidelines.
11. The Board should require agency staff to participate in trainings offered by the State Personnel Board and seek mediation assistance from a human resources or counseling professional in order to provide leadership coaching and relationship-building skills.

# A Review of the Mississippi State Board of Cosmetology

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## Introduction

### Authority

The PEER Committee conducted this review of the operations of the Mississippi State Board of Cosmetology (MSBC) pursuant to the authority granted by MISS. CODE ANN. § 5-3-51 (1972) et seq.

### Scope and Purpose

In conducting this review, PEER sought to:

- determine if the Board complies with relevant statutes for licensing and regulating cosmetology and related professions;
- determine if state laws governing Board composition and duties adequately protect the interests of the public and the occupations regulated;
- determine if the Board makes efficient use of its per diem and travel resources; and,
- determine if the Board's staffing structure ensures the protection of state assets.

### Method

To conduct this analysis, PEER reviewed:

- state agency appropriation bills from FY 2017 to present;
- applicable state and federal laws and regulations; and,
- relevant data and documents provided by MSBC, including licensing data, financial records, inspection data, and contracts.

PEER also interviewed:

- the Board and staff of MSBC;
- personnel from the National Interstate Council of State Boards of Cosmetology;
- personnel from various state agencies including the Department of Finance and Administration, the State Personnel Board, and the Department of Health; and,
- representatives from third-party contractors working with MSBC.

PEER also attended and observed four Board meetings.

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# Background

The Legislature established MSBC in 1948 to regulate schools, salons, and individuals engaged in the teaching, demonstration, and practices of cosmetology, manicuring, and esthetics. State law authorizes the Board to regulate these professions through making rules and regulations; establishing curricula for schools; issuing licenses; and enforcing laws, rules, and regulations.

As of October 12, 2021, MSBC oversees 43 licensed cosmetology schools, 4,602 licensed salons, and 19,017 practitioner licenses.

## Definition of Cosmetology

**Cosmetology is defined in MISS. CODE ANN. § 73-7-2-(b) (1972). MSBC is responsible for regulating the profession of cosmetology and its associated practices (e.g., manicuring, esthetics).**

MISS. CODE ANN. § 73-7-2 (b) (1972) defines cosmetology as:

*. . . any one (1) or a combination of the following practices if they are performed on a person's head, face, neck, shoulder, arms, hands, legs or feet for cosmetic purposes:*

*(i) Cutting, clipping or trimming hair and hair pieces.*

*(ii) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, bleaching, tinting, coloring or similarly treating hair and hair pieces.*

*(iii) Cleansing, stimulating, manipulating, beautifying or applying oils, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical apparatus.*

*(iv) Arching eyebrows, to include tweezing, waxing, threading or any other methods of epilation, or tinting eyebrows and eyelashes.*

*(v) Removing superfluous hair by the use of depilation.*

*(vi) Manicuring and pedicuring.*

MSBC is also responsible for regulating manicurists and estheticians. The legal definitions of these professions are shown in Exhibit 1 on page 3.

While there is overlap between the professions of cosmetology and barbering, in Mississippi, the barbering profession is regulated by its own separate board, the State Board of Barber Examiners (for more information, see page 38).

## Exhibit 1: Practices Included in the Other Professions Regulated by the Board of Cosmetology

Profession	Associated Practices
Esthetics	Massaging the face or neck of a person.
	Arching eyebrows to include trimming, tweezing, waxing, threading, or any other method of epilation or tinting eyebrows and eyelashes.
	Tinting eyebrows or eyelashes.
	Waxing, stimulating, cleaning, or beautifying the face, neck, arms, or legs of a person by any method with the aid of the hands or any mechanical or electrical apparatus, or by the use of a cosmetic preparation.
Manicuring and Pedicuring	Cutting, trimming, polishing, coloring, tinting, cleansing, or otherwise treating a person's nails.
	Applying artificial nails.
	Massaging or cleansing a person's hands, arms, legs, or feet.

SOURCE: MISS. CODE ANN. § 73-7-2 (1972).

## Composition and Duties of the Board of Cosmetology

As constituted under MISS. CODE ANN. § 73-7-1, MSBC is composed of five members that serve four-year terms. MSBC regulates schools, salons, and individuals by determining school curricula, issuing licenses, and establishing and enforcing its rules and regulations.

As presently constituted under MISS. CODE ANN. § 73-7-1, MSBC is composed of five members appointed by the Governor with the advice and consent of the Senate. The members serve four-year terms that begin on their date of appointment. No more than two members can be appointed from each Supreme Court district. To be eligible for appointment as a Board member, the applicant must possess a high school education or its equivalent and must be:

- a citizen of the state of Mississippi for a minimum of five years immediately prior to appointment;
- at least thirty years of age; and,
- a licensed cosmetologist with not less than ten years' active practice in cosmetology.

MISS. CODE ANN. § 73-7-1 (1972) further provides that no Board member can be connected in any way with any school wherein cosmetology is taught, and no two Board members can be graduates of the same school of cosmetology.

Exhibit 2 on page 4 lists MSBC members as of October 2021. For more information on Board composition, see page 9.

## Exhibit 2: Members of the Board of Cosmetology

Name	City	Supreme Court District	Initial Appointment Year	Term Ending Date
Deborah Coker	Madison	1st	2017	March 28, 2023
Dorothy Ennis	McComb	2nd	2001	March 28, 2023
Hilda Bills	Jackson	1st	2002 <sup>1</sup>	March 28, 2023
Jewel Stewart	Biloxi	2nd	2019	March 28, 2023
Warren Rossi	Corinth	3rd	2021	March 28, 2023

<sup>1</sup> Ms. Bills was initially appointed to serve on the Board in 2002 for a term expiring in August 2006. She was appointed to the Board again in 2017.

SOURCE: Mississippi State Board of Cosmetology website.

MSBC has the legal authority to regulate schools, salons, and individuals engaged in the teaching, demonstration, and practices of cosmetology, manicuring, and esthetics. State law authorizes the Board to regulate these professions through making rules and regulations; establishing curricula for schools; issuing licenses; and enforcing laws, rules, and regulations. Exhibit 3 on page 4 shows a breakdown of the number of licensed schools, salons, and practitioners, by type, as of October 12, 2021.<sup>2</sup>

## Exhibit 3: Licensed Schools, Salons, and Practitioners (as of October 12, 2021)

License Type		# of Licenses
<b>Schools</b>		<b>43</b>
<b>Salons</b>		<b>4,602</b>
<b>Practitioners</b>		
	<i>Cosmetologists</i>	15,389
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	<i>Instructors (Cosmetology)</i>	367
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	<i>Instructors (Esthetics)</i>	10
	<b>Total Practitioners</b>	<b>19,017</b>

<sup>1</sup> Ms. Bills was initially appointed to serve on the Board in 2002 for a term expiring in August 2006. She was appointed to the Board again in 2017.

<sup>2</sup> Includes salons and practitioners whose expired licenses could be renewed with the MSBC without the requirement of completing additional steps, such as a new salon application or retaking required tests.

MISS. CODE ANN. § 73-7-7 (1972) requires that any rules that the Board issues relative to sanitation must first have the written approval of the Board of Health to ensure that MSBC's sanitation rules and regulations are consistent with the Board of Health's guidelines.

MSBC carries out its enforcement responsibilities through investigating violations and administering disciplinary actions, including revoking and suspending licenses and imposing fines.

MISS. CODE ANN. § 73-7-7 establishes the Mississippi Cosmetology Council for the purpose of making recommendations to the Board concerning rules and regulations, curriculum, and related matters. The Council meets annually and is composed of the Board's members and five elected delegates from each of the following associations: Mississippi Cosmetology Association, Mississippi Cosmetology School Association, Mississippi Independent Beauticians Association, and School Owners and Teachers Association. The Board's policy requires the Council to meet once per year.

## Organization and Staffing

**MISS. CODE ANN. § 73-7-3 (1972) authorizes the Board to employ staff members to assist with Board activities. As of October 1, 2021, the Board had nine full-time staff members.**

MISS. CODE ANN. § 73-7-3 (1972) authorizes the Board to "employ such clerical and stenographic assistance, bookkeepers, investigators and other agents as they may deem necessary. . . and inspectors as needed, not to exceed seven (7) [inspectors]."

As of August 2021, the Board adopted a new organizational structure that divides the agency operations into two distinct categories:

- **Licensure and Office Operations:** Responsible for license processing, communications, client relations, revenue, and fiscal coordination; and,
- **Compliance, Schools, and Salons:** Responsible for salon and school inspections, complaint investigations, hearings, student records, and licensure examinations/evaluations.

There is a manager for each of the two areas who report directly to the Executive Director. For the full organizational chart, see Appendix A on page 45. The Board is authorized to hire up to 13 full-time employees, but as of October 1, 2021, the Board had only nine full-time staff members. For more information on inspector position vacancies, see page 21.

An attorney from the Mississippi Office of the Attorney General provides the Board with assistance on legal matters. For example, the attorney attends all Board meetings and represents the Board during administrative hearings held to determine whether disciplinary action will be taken concerning a practitioner, salon, or school.

## Revenues and Expenditures

MSBC is a special fund agency supported by funds collected from licensing, inspection, and examination fees and fines collected for disciplinary actions as set forth in MISS. CODE ANN. § 73-7-29 (1972).

MSBC is a special fund agency supported by funds collected from licensing, inspection, and examination fees and fines collected for disciplinary actions as set forth in MISS. CODE ANN. § 73-7-29 (1972). Exhibit 4 on page 6 lists fees established in state law. In FY 2021, the Board collected approximately \$939,000 in revenues.

Appendix B on page 46 shows the Board's revenues, expenditures, and end-of-year cash balances for fiscal years 2019 through 2021. Over this period, expenditures increased from approximately \$580,000 to \$884,000, an increase of 52%. The largest contribution to the increases in expenditures was higher spending on contractual services, including a new licensing system.

### Exhibit 4: Fees Charged by the Mississippi State Board of Cosmetology

Type of Fee	Amount (\$)
<b>Individual<sup>1</sup></b>	
Initial License/Renewal for Practitioner	50.00
Instructor Initial License/Renewal	80.00
Master Cosmetologist License/Renewal	70.00
Delinquent Renewal Penalty - Practitioner	50.00
<b>Salons and Schools</b>	
Salon Application and Initial Inspection	85.00
Salon Reinspection	35.00
Salon Change of Ownership or Location, or Both	85.00
Salon Renewal	60.00
Salon Delinquent Renewal Penalty	50.00
Application and Initial Inspection for a New School	300.00
New School Reinspection	100.00
School Change of Ownership	300.00
School Relocation	150.00
School Renewal	75.00
School Delinquent Renewal Penalty	100.00
<b>Other</b>	
Duplicate License	10.00
Penalty for Insufficient Fund Checks	20.00
Affidavit Processing	15.00

<sup>1</sup> MISS. CODE ANN. § 73-7-29 states that "there is no renewal fee for any licensee seventy (70) years of age or older."

SOURCE: MISS. CODE ANN. § 73-7-29 (1972).

## Need to Regulate Cosmetology and Related Occupations

**Risk factors associated with the practice of cosmetology create a need for state government to protect the public. MSBC, if it fulfills its regulatory functions properly, should diminish the profession's risk to the public.**

The nature of the practice of cosmetology presents a risk to the public if practitioners are not properly trained and regulated. Risks associated with the cosmetology profession fall into two major categories:

- transmission of communicable diseases and infection; and,
- physical harm resulting from improper use of equipment and products.

Because of the seriousness of these health and safety risks, all states regulate the practice of cosmetology.

### Transmission of Communicable Diseases and Infections

Because cosmetology involves physical contact between practitioner and client and the use of the same equipment on multiple clients (e.g., combs, scissors, foot baths), there is a risk of transmitting the following types of communicable diseases and infections:

- viral infections such as HIV, hepatitis B and C, and warts;
- bacterial infections such as staphylococcus, streptococcus, and pseudomonas; and,
- fungal infections such as athlete's foot, nail fungus, ringworm, and yeast.

State regulatory boards attempt to address these risks by developing sanitation rules and regulations such as procedures for handling blood spills and disinfecting work surfaces, instruments, materials, and supplies. MISS. CODE ANN. § 73-7-33 (1972) prohibits anyone who has a communicable disease or parasitic infection that is a direct threat of transmission from practicing cosmetology and also prohibits practitioners from performing work on a patron with a visible disease. MSBC attempts to ensure adherence to sanitation rules and regulations by requiring their inclusion in cosmetology school curricula, testing applicants' knowledge of these rules during the licensing process, and conducting inspections of salons to ensure that practitioners are adhering to the rules in practice.

### Physical Harm

The cosmetology industry uses a wide variety of chemicals and tools (e.g., curling irons, razors, scissors) that could result in physical harm to both the practitioner and client. Potentially harmful chemicals are used in products for hair coloring, lightening, waving, and relaxing; nail application products; and chemical peels for the skin. If used improperly, these chemicals can cause hair and nail damage and loss as well as chemical burns to the skin.

The fumes from some of these products can cause headaches and respiratory disorders. Further, individuals can be allergic to chemicals used in hair, nail, and skin care products, which is why many manufacturers of these products recommend skin patch testing of the product on the client prior to full application.

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# Issues with Board Composition, Structure, and Responsibilities

This chapter discusses the following issues:

- issues regarding composition and structure of MSBC; and,
- issues regarding responsibilities of MSBC.

## Issues Regarding Composition and Structure of MSBC

**MSBC, in its current form and as prescribed by state law, does not ensure that the interests of consumers and the broad range of persons it licenses are represented on the Board. Additionally, the Board member terms are not staggered as is the usual practice for boards and commissions, and the qualifications for Board service are higher than those found for comparable boards and commissions.**

MSBC oversees the professional licensing for not only cosmetologists, but also for manicurists, estheticians, and instructors of cosmetology, manicuring, and esthetics. MSBC also issues licenses for master cosmetologists, master manicurists, and master estheticians, which, unlike standard licenses, require continuing education for renewal. MSBC is responsible for working in the best interest of both practitioners and consumers by creating and enforcing the rules and regulations that govern these professions, including education requirements for licensing, health and safety standards, and the implementation and enforcement of fines. However, MSBC's current composition makes it difficult to effectively accomplish this goal.

### Statutory Membership Requirements

***The Board's statutory requirements do not allow MSBC to adequately represent consumers and all licensees that fall under the purview of MSBC.***

As required by statute, all five of Mississippi's Board members are cosmetologists. There is no representation on the Board for manicurists, estheticians, active instructors, school owners, or consumers, and no guaranteed representation for salon owners in the current composition of the Board, as prescribed by statute. This lack of representation leaves many stakeholders and consumers without a voice in MSBC's decisions, some of which can have large implications for members of those professions. Examples of regulatory changes discussed that would have a significant impact on unrepresented stakeholders include:

- Discussions of increasing educational requirements for the licensing of manicurists, a desired outcome by some Board members and members of the public; and,
- Requests to combine the curricula of cosmetology instructors and barber instructors and not require dually licensed instructors to attend school twice.

In Mississippi's contiguous states, boards with responsibilities similar to those of MSBC have members who better represent the whole of the professions they regulate. Exhibit 5 on page 10 illustrates the composition of boards of contiguous states that regulate similar professions.

**Exhibit 5: Comparison of Mississippi and Contiguous States' Boards of Cosmetology**

State	Board Name	Number of Members	Board Makeup	Consumer Representative?
Mississippi	Mississippi State Board of Cosmetology	5	<ul style="list-style-type: none"> <li>5 cosmetologists</li> </ul>	No
Alabama	Alabama State Board of Cosmetology and Barbering	7	<ul style="list-style-type: none"> <li>2 cosmetologists</li> <li>2 barbers</li> <li>1 esthetician</li> <li>1 manicurist</li> <li>1 consumer representative</li> </ul>	Yes
Arkansas	Arkansas Cosmetology Technical Advisory Committee	7	<ul style="list-style-type: none"> <li>1 cosmetologist</li> <li>1 nail technician</li> <li>1 school owner or director</li> <li>1 esthetician</li> <li>3 at-large members from the cosmetology industry</li> </ul>	No
Louisiana	Louisiana Board of Cosmetology	8	<ul style="list-style-type: none"> <li>All 8 must be a cosmetologist for at least 5 years, or an owner of a salon. No more than 4 members can be connected to any particular school of cosmetology.</li> </ul>	No
Tennessee	Tennessee State Board of Cosmetology and Barber Examiners	14	<ul style="list-style-type: none"> <li>3 cosmetologists</li> <li>2 master barbers</li> <li>1 manicurist</li> <li>1 esthetician</li> <li>1 natural hair stylist</li> <li>1 cosmetology or barber instructor</li> <li>1 cosmetology or barber shop owner</li> <li>1 barber school owner</li> <li>1 cosmetology school owner</li> <li>1 public member who is not a cosmetologist</li> <li>1 public member with a background in education and no background in cosmetology</li> </ul>	Yes

SOURCE: PEER analysis of boards of contiguous states.

## Term Staggering

***All five MSBC members' terms are running concurrently and will end on March 28, 2023. A lack of term staggering has the potential to create issues in maintaining a quorum for the Board and issues in maintaining institutional knowledge and leadership within the membership of MSBC.***

Four out of the Board's five members were reappointed by the Governor and confirmed by the Legislature on March 28, 2019, to serve through March 28, 2023. Mr. Rossi is completing the term of a previous Board member who was also confirmed on March 28, 2019; therefore, his term will also expire on March 28, 2023. See Exhibit 2 on page 4.

As all of the members' terms expire on the same day, a failure to reappoint the current Board members or their replacements quickly will have an impact on MSBC's ability to meet a quorum and effectively conduct the business of the Board. Even in cases in which appointments are timely made, major changes in membership occurring at the same time can deprive the Board of institutional memory necessary to oversee regulatory programs effectively.

Additionally, MISS. CODE ANN. § 73-7-1 states that "there shall be a president of the board... provided that the member elected as president shall have at least one (1) year of experience on the board." In the event that every member of the Board leaves his or her position simultaneously, there would be no one qualified to serve as the Board's president.

The statute of MSBC lacks a provision staggering the initial and subsequent terms of Board members. Similar boards often have records in their statute of how the terms were staggered when the board was originally constituted, and clauses for interim appointments so that the staggering of terms is never interrupted by an unexpected vacancy to the board. Examples of boards with term staggering present in statute include:

- The State Board of Barber Examiners;
- The Mississippi Community College Board;
- The State Board of Architecture;
- The State Board of Auctioneers;
- The State Board of Chiropractors;
- The State Board of Nursing; and,
- The State Board of Pharmacy.

## Board Qualification Requirements

***Board member qualification requirements are some of the most restrictive of any board in the state.***

MISS. CODE ANN. § 73-7-1 lays out requirements for service as a Board member:

*To be eligible for appointment as a member of the State Board of Cosmetology, the person applying shall have been a citizen of this state for a minimum of five (5) years immediately prior to appointment. Such person shall be at least thirty (30) years of age, possess a high school education or its equivalent, and shall have been a licensed cosmetologist with not less than ten (10) years' active practice in cosmetology. No member of the board shall be connected in any way with any school wherein cosmetology is taught, nor shall any two (2) members of the board be graduates of the same school of cosmetology.*

This statute contains some of the most restrictive qualifications of any board in the state, and it restricts the pool of candidates eligible to serve as members of the Board. The State Board of Barber Examiners, which is the most similar in scope of responsibility to MSBC, requires that candidates for appointment only be qualified electors of the state with five years of barbering experience in Mississippi.

## Issues Regarding Responsibilities of MSBC

**MSBC Board members are involved in day-to-day responsibilities that should be handled by the staff. Additionally, MSBC's meetings are disorganized and inefficient, and on 10 occasions in FY 2021, a quorum of the Board met but did not provide meeting minutes.**

This section discusses the following issues:

- issues regarding MSBC involvement in decision-making for day-to-day operations;
- inefficiencies of Board meetings; and,
- issues regarding missing and untimely Board meeting minutes.

### **Issues with MSBC Involvement in Decision-Making for Day-to-Day Operations**

*Based on state law and recommendations of the State Auditor, the role of a board is to oversee the management of an agency. PEER's evaluation of MSBC operations highlighted Board activities that could more accurately be described as involvement in day-to-day operations. This level of involvement could be contributing to inefficient agency operations, interference with the Executive Director's ability to accomplish responsibilities and tasks assigned by the Board, and a misunderstanding of clear roles and expectations of agency staff.*

As stated in MISS. CODE. ANN. § 73-7-7, MSBC Board members are responsible for setting rules and regulations for agency operations in carrying out the provisions charged to it by state law. Additionally, MISS. CODE. ANN. § 73-7-3 authorizes the Board to hire staff to carry out day-to-day operations. The Office of the Mississippi State Auditor states that "board members do not actively take part in the day-to-day operations of the government. Their role is to manage the management." In many instances, Board

members seem to involve themselves in the day-to-day operations meant to be delegated to the Executive Director or hired staff.

Neither the enabling statutes of MSBC nor its rules and regulations specifically outline the Executive Director's role and responsibilities. A lack of defined responsibilities for the role creates opportunities for Board members to involve themselves in day-to-day activities which could contribute to inefficient agency operations and hinder the Executive Director's ability to carry out the Board's directives efficiently and effectively.

For example, while the Board should be involved in the development and approval of the initial budget framework, the expenditure of the budget is a day-to-day agency operation that, as long as such expenses are within the framework of the approved budget, should be the responsibility of the Executive Director. At multiple Board meetings, members discussed the purchasing and contracting of office equipment, including:

- scanners;
- cell phones for Board members and agency staff;
- laptops for Board members and agency staff;
- mobile Wi-Fi systems for staff members administering off-site tests for prospective licensees; and,
- the renewal of the contract for the MSBC's office printer.

The Board's involvement in approving the use of specific funds could contribute to delays in purchasing of necessary equipment, and therefore result in operational inefficiency.

This dynamic also affects the Executive Director's ability to carry out the Board's directives. For example, the Executive Director's lack of authority and the Board's involvement in the hiring process could contribute to delays in the hiring of personnel that are vital to the Board's mandate, which could make the accomplishment of that mandate more difficult.

An executive director typically operates as the chief executive of a board, and as such should have the authority to make decisions that help the agency accomplish those directives.

During MSBC's August 9, 2021, meeting, one Board member opposed the suggestion of creating a flexible work schedule for a new inspector that the Executive Director wanted to hire. The Executive Director and other Board members were at first supportive of the idea of a flexible work schedule, as allowed by State Personnel Board policy. The Executive Director even suggested offering the schedule to other inspectors as a potential added benefit that could improve retention of current inspectors and new hires. However, the Board ultimately voted to deny the request after the member expressed opposition to the idea. The vote to deny the request was unanimous. After denying the request, the Board also rejected the candidate's application and asked that the candidate reapply for the position if the candidate wanted to do the job on the traditional schedule.

Clear delineation of expected roles and responsibilities of the Board and the Executive Director could give the Executive Director more authority to more quickly make decisions that help accomplish the Board's directives, which could contribute to more efficient and effective MSBC operations.

Additionally, the Board's involvement in day-to-day operations could lead to a misunderstanding of clear roles and expectations of agency staff. For example, Board members are at times involved in the license renewal process. Practitioners seeking a license renewal must confirm their identity to MSBC. If a practitioner's identity cannot be confirmed by office staff through documentation provided by the practitioner, the practitioner is then asked to come before the Board either in person or on Zoom so the Board members can attempt to confirm his or her identity. The Board does not have the resources to confirm a person's identity beyond this visual check, which is a subjective and unreliable process. Using this method could open the Board up to potential liability and a perception of bias or discrimination, while also further involving the Board in day-to-day operations.

### **Inefficiencies of Board Meetings**

***MSBC's meetings are disorganized and disordered, creating inefficient meetings. Because meetings are inefficient, the Board does not complete its agenda items and must meet frequently in attempt to cover necessary topics and material. Frequent meetings could result in excess costs to the Board.***

State law requires boards to provide effective governance and oversight to their respective areas of responsibility. While entrusted with this power, boards must run their operations, including meetings, efficiently and effectively, to ensure that public funds are expended in a prudent manner that is in the public's best interest.

PEER attended and observed four MSBC Board meetings: a regularly scheduled meeting on July 26, 2021, a special Board meeting that took place on August 9, 2021, and two more regularly scheduled meetings on September 27, 2021, and October 25, 2021.

These meetings lacked order, due in large part to the Board's seeming lack of familiarity with proper procedure for running meetings, and a lack of control by the Board president in maintaining order in the meeting.

Examples of this disorder include:

- MSBC meetings often start later than the designated meeting time.
- The Executive Director and Board members are unprepared for meetings. Relevant documents are not readily available to the Board at the start of meetings. The meeting must pause when unavailable documents need to be printed.
- The Board struggles to remain on schedule with the agenda. Meetings often run longer than can be reasonably presumed to be appropriate.

- The Board president consistently refers to the Board's Attorney General representative for guidance on routine meeting rules and procedures, particularly related to entering into and exiting executive sessions.
- In the July 26, 2021, meeting, a member of the public presented a request to extend continuing education requirement reductions created by the Board to accommodate licensees during the COVID-19 pandemic. Board members lacked clarity regarding the request, which led to frequent interruptions, side conversations, and repetition of conversations. When the discussion concluded over an hour later, the Board elected to table the discussion for a later date.
- In the August 9, 2021, meeting, the Board deferred to a representative from Cornerstone Consulting, one of its independent contractors, to maintain order and move discussions forward.

In FY 2021, the Board had 20 official meetings.<sup>3</sup> These meetings were for conducting the regular business of the Board, and only included one meeting for the purpose of conducting hearings. There were also 10 occasions on which a quorum of the Board requested per diem for a meeting, but no minutes were kept. The Board's disorganization during meetings leads to more frequent meetings than necessary.

### **Missing and Untimely Board Meeting Minutes**

***While MSBC makes Board meeting minutes available on its website, PEER found 10 instances in FY 2021 in which a quorum of the Board gathered but did not provide minutes detailing Board activities or decisions. When the Board does not provide information related to Board actions and discussions (especially in telephonic meetings), this failure decreases accountability and could lead to mistrust between the Board, its licensees, and the public.***

It is well settled by the Mississippi Supreme Court that minutes are an essential component to establishing that a board meeting took place. In 2016, the Mississippi Supreme Court stated in *KPMG, LLP v. Singing River Health Sys.*, 283 So. 3d 662, 669 (Miss. 2018):

*For well over a century, this Court has consistently held that public Boards speak only through their minutes and that their acts are evidenced solely by entries on their minutes.*

MSBC makes available digital records of its meeting minutes on the Board website. However, during a review of Board member travel reimbursement, PEER noted 10 instances in which a quorum of the Board requested per diem and/or reimbursement for Board activities in FY 2021 but posted no minutes to its website, which is standard practice for the Board. When queried, MSBC staff provided

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<sup>3</sup> An "official meeting" is defined by PEER as an instance in which a quorum of the Board met to conduct business, and minutes were kept to communicate the actions of the Board.

details on the activities of the Board at these times. Descriptions of the activities included:

- rules and regulations workshop;
- practical testing workshop;
- special telephonic Board meeting; and,
- Board teleconference.

Based on the descriptions provided by MSBC staff, these instances represent activities that could have constituted a Board meeting for which minutes should have been produced. As of November 1, 2021, no minutes were available on the Board's website for these activities, dating back to August 2020.

Public bodies, including boards and regulatory agencies, conduct meetings in open sessions so that the public can be informed of what actions their policymakers take in representing the interests of the public. When the Board does not provide information related to Board activities (especially in telephonic meetings) in a timely manner, this failure decreases accountability and could lead to mistrust between the Board, its licensees, and the public.

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## Issues with Regulatory Activities

This chapter discusses issues regarding:

- the licensure process; and,
- the enforcement process.

### Issues Regarding the Licensure Process

**While the new universal licensing law has made the licensing process more streamlined and effective for out-of-state transfers, it has also created an imbalance in the licensing requirements between in-state and out-of-state applicants, resulting in a competitive disadvantage for Mississippi residents.**

Recent changes to Mississippi law have created universal professional licensing, which allows out-of-state applicants with a year of licensed experience in another state to receive a Mississippi professional license without needing to satisfy any additional requirements from any Mississippi licensing board, such as additional education hours, re-testing, or other requirements that were not mandatory for their initial licensure, with the exception of jurisprudential exams on state laws that are also required by the board for in-state applicants.

H.B. 1263 (2021 Regular Session) took effect on July 1, 2021, creating a universal professional licensing standard for all applicants seeking a professional license in Mississippi that they also currently hold in good standing in another state.

With this change, Mississippi residents seeking a license from MSBC must meet different requirements for licensing than out-of-state residents, including an English fluency requirement that is unique to the state of Mississippi.

MISS. CODE ANN. § 73-7-1 (1972) et seq., along with creating MSBC, creates the requirements for licensure for all professions that fall under the purview of MSBC. To be eligible for licensure, applicants must have completed the prescribed number of educational hours, which are as follows:

- Cosmetologists - 1,500 hours;
- Manicurists - 350 hours;
- Estheticians - 600 hours; and,
- Instructors - 1,000 hours.

In addition to the educational requirements to qualify for licensure, all applicants for licensure as cosmetologists, manicurists, or estheticians must be 17 years of age and hold a high school diploma or its equivalent. Applicants for licensure as an instructor must be 21 years of age, currently hold an active license for the profession of which they intend to instruct, and have successfully completed at least six semester hours in college courses. All applicants for licensure must also demonstrate that they “can read, write, and speak English.”

## Age and Education Requirements

*Mississippi has more restrictive age and educational prerequisites to qualify for licensure testing than its contiguous states. Also, there are as many as 31 states with less restrictive prerequisites in either category.*

MISS. CODE ANN. § 73-7-13 through 73-7-21 (1972) describe the requirements for licensure for cosmetologists, estheticians, and manicurists. In order to be eligible to sit for a licensure examination, a person is required to be “at least seventeen (17) years of age... and [have] a high school education or its equivalent or [have] successfully enrolled in a community college.” These standards are the most restrictive prerequisites of Mississippi’s contiguous states. Exhibit 6 on page 18 shows these requirements for Mississippi’s contiguous states.

### Exhibit 6: Age and Education Prerequisite Requirements for Licensing in Mississippi’s Contiguous States

State	Governing Board	Age Prerequisite (years)	Education Prerequisite (grade)
Alabama	Alabama Board of Cosmetology and Barbering	16	10
Arkansas	Cosmetology Technical Advisory Committee (within Arkansas Dept. of Health)	16	10
Louisiana	Louisiana Board of Cosmetology	16	10
Mississippi	Mississippi State Board of Cosmetology	17	12 + English fluency
Tennessee	State Board of Cosmetology and Barber Examiners	16	10

SOURCE: PEER analysis of nationwide statutes governing cosmetology licensing.

At 17 years, the age prerequisite is also higher than any similar requirement in 21 states, including six states in which there is no minimum age requirement. The education requirement of a high school degree or its equivalent is higher than the minimum education requirement in 31 states, including seven states in which there is no such requirement.

It could be more prudent for a resident of Mississippi who does not meet these requirements to leave the state for a period of time to earn their license and return through universal licensing than risk being denied licensure due to age or a lack of education. It may also encourage them to earn their license in another state and never return, or to attempt to practice the profession without a license. The current statute, especially with the implementation of the new universal licensing law, has created a barrier that disincentivizes people from receiving their initial license from Mississippi.

## English Fluency Requirement

***Mississippi is the only state in the United States with an English fluency requirement for licensure to be a cosmetologist, esthetician, manicurist, or instructor of any of these professions.***

The state's English fluency requirement for licensure places current in-state standards in direct conflict with the new universal law, which allows out-of-state license applicants to bypass this requirement with a one-year work permit. Applicants for universal licensure will be required to pass an examination on state laws before becoming fully licensed in the state.

It could be more prudent for a resident of Mississippi who is not fluent in English to leave the state for a period of time to earn their license and return through universal licensing than risk being denied licensure due to a lack of English fluency. The current statute, especially with the implementation of the new universal licensing law, has created a barrier that disincentivizes people from receiving their initial license from Mississippi.

Alternatively, a person who cannot fulfill the fluency requirement could attempt to work in the profession without a license, creating a more dangerous environment for licensees and consumers.

The English fluency requirement could also create a potential appearance of discrimination and bias by the Board, opening the Board up to potential legal liability. For example, this requirement may have a disparate impact on minority communities in which English is commonly a second language, creating an implicit bias against those communities.

## Apprenticeships

***Twenty-two states offer apprenticeship as an alternative to schooling for qualifying for licensure, but Mississippi does not. It is more difficult and cost-prohibitive to earn a license from MSBC than to do so in some other states.***

There are 22 states that allow cosmetology license seekers to receive their training through apprenticeships in lieu of schooling. Twenty states allow apprenticeships for manicurists, and 21 states for estheticians. These states typically offer the option to earn a set number of school hours to qualify for licensure, with the option to replace those school hours with apprenticeship hours that are double the amount required through schooling. For example, in the state of Alabama, a person seeking a license in cosmetology may receive their training by completing 1,500 school hours, or by completing 3,000 hours of apprenticeship within a 3-year period. For more information on licensing requirements for cosmetology in all 50 states and the District of Columbia, please see Appendix C on page 47.

In some instances, it could be easier and more cost-effective for a Mississippi resident to move to Alabama (or another state with similar laws), earn their license through an apprenticeship, and move back to Mississippi to get licensed through universal licensing than to attempt to earn a Mississippi license through the in-state licensing standards.

Apprentice training can have multiple benefits for in-state residents. First, apprenticeships could benefit low-income residents seeking a license, who may not be able to stop working to go to school, or even be able to afford school. For example, one cosmetology school that has multiple locations in the state offers a 20 to 30 hour per week course load that costs students approximately \$15,500 for tuition, registration, books, and cosmetology kit. Though the schedule does allow some opportunity for students to have time to work outside of school, the cost of the program could still ultimately be prohibitive for some license seekers.

Additionally, apprenticeship could reduce risk to practitioners. The top violation for which salons and practitioners were fined was practicing without a license and allowing an unlicensed practitioner to work. Creating an apprenticeship program could allow these salons and unlicensed practitioners an opportunity to correct the current issues through apprenticeship programs overseen and approved by the Board, which could decrease the financial burden on practitioners, improve the health and safety of consumers by providing oversight to these unlicensed practitioners, and give those same practitioners an opportunity to earn their license.

## Issues Regarding the Enforcement Process

**In FY 2021, MSBC completed only 63% of its mandated inspections and is unlikely to finish inspections in FY 2022 due to current staffing levels. Further, inspectors give warnings to licensees for most first-time violations, contravening the Board’s rules and regulations. Regarding the handling of complaints and violations, MSBC does not have a consistent complaints investigation process and does not schedule a regular, standard time to hold hearings.**

This section addresses the following issues:

- incomplete statutory inspections;
- improper/inconsistent use of penalties;
- inconsistent complaint investigation; and,
- issues with conducting hearings.

### Incomplete Statutory Inspections

***MSBC’s rules mandate that the Board annually inspect every licensed salon and school in the state. Having only completed 63% of its required inspections, the Board failed to complete its mandated annual inspections for FY 2021, and is unlikely to do so in FY 2022 at current staffing levels. This increases the potential for inconsistent operations and sanitation standards across the state.***

The rules and regulations of MSBC mandate that “all establishments licensed by the Mississippi State Board of Cosmetology shall be inspected at least once per year to ensure compliance with the laws, rules, and regulations of the Board of Cosmetology.” Additionally, any new salon must be inspected and approved before opening, and any complaints submitted to MSBC

must be investigated by one of the Board members and/or an inspector.

As of October 12, 2021, there are approximately 4,645 salons and schools regulated by MSBC in the state of Mississippi. According to MISS. CODE ANN. § 73-7-3 (1972), MSBC has the authority to hire as many as seven inspectors. However, MSBC typically utilizes only five inspectors in its operations. Due to vacancies, MSBC has three inspectors on staff as of October 2021. Each inspector is responsible for the salons and schools in a set geographic territory, which contains approximately 1,000 schools and salons. See Exhibit 7 on page 22 for a map of MSBC's geographic territories, salons, and schools.

Inspections are scheduled prioritizing the opening of new salons, and inspectors are expected to complete eight inspections per day, with each inspection lasting an hour. Inspectors must get approval before staying overnight during inspection travel or being reimbursed for overnight travel, and typically instead travel home every day, regardless of the distance traveled.

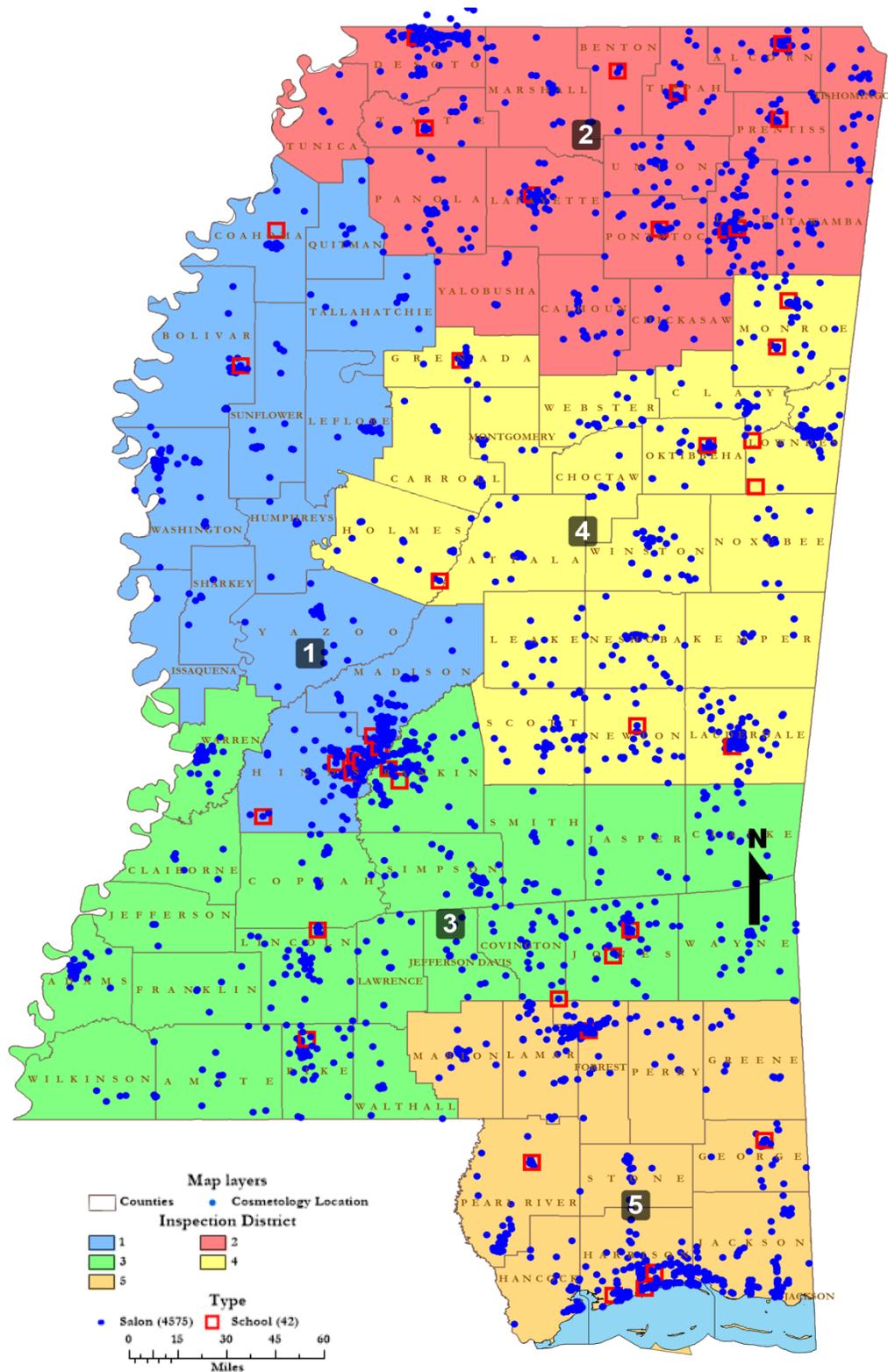
In FY 2021, MSBC's four inspectors completed 3,854 inspections at 2,924 salons and schools. Since the Board's mandate requires that every salon and school be inspected annually, inspectors only accomplished 63% of that requirement. The process of scheduling inspections usually relies on inspecting the areas surrounding the opening of a new salon, which can result in some salons being inspected multiple times annually, while others may never see an inspector.

MSBC has since lost an inspector, bringing its number of inspectors to three. These vacancies mean that two territories that span almost half of the state are without a dedicated inspector. It would appear highly unlikely that the current workforce will be able to complete the total mandated number of inspections by the end of FY 2022, since in the first three months the inspectors have only accomplished inspections for 464 salons and schools, approximately 10% of the annual requirement.

Even if MSBC could successfully utilize its typical level of staffing, with all five inspector positions filled, the territories for many of the inspectors are so large that it is difficult for them to do a sufficient number of inspections on days when they must travel to and from the furthest reaches of their territories.

MSBC's unwillingness to consider potential benefits like flexible work schedules has contributed to high turnover. There have been interested, qualified candidates turned away because the candidate made requests for accommodation in their work schedule that were allowed by state law but denied by MSBC.

**Exhibit 7: Map of MSBC Territories, Salons, and Schools**



SOURCE: PEER analysis of information provided by MSBC.

## **Improper/Inconsistent Use of Penalties for Violations**

***Inspectors give warnings to licensees for most first-time violations, contravening the Board's rules and regulations.***

MSBC rules and regulations are created, approved, and enforced by the Board itself. They lay out the specific health and safety standards that practitioners licensed by the Board must adhere to, as well as a specific list of violations and the corresponding penalties. Violation penalties have two levels: "1st offense," and "2nd and subsequent offense." Depending on the violation, "1st offense" penalties range between \$50 and \$100, while "2nd and subsequent offense" penalties are at least double the cost of a "1st offense," ranging from \$100 to \$400.

Based on interviews with Board members, staff, and inspectors, as well as PEER staff observations from a conversation with a Board inspector, inspectors do not give out violations for first offenses if they can be corrected during the inspection by a licensee. The inspector instead gives the licensee a warning, which they record in their inspection report. If the same violation is found on a subsequent inspection, the licensee is then fined as if it is the licensee's first violation.

For example, PEER staff observed a Board inspector conduct a routine inspection in which a practitioner's station had multiple minor violations, including barbicide that had not been properly replaced and a hairbrush that had not been sufficiently sanitized after use. The practitioner was not present at the time of the inspection to correct the violations, so the inspector informed the salon owner of the violations and issued a warning for them, which was noted in the inspection report. No violations or fines were issued.

Every member of MSBC that PEER staff interviewed stated that they felt the Board's role in performing inspections is not only to ensure the health and safety of the public, but also to educate the licensees on proper operations and best practices, rather than punish licensees for errors. While this practice and sentiment are uniformly accepted by MSBC, it is also in direct violation of the Board's rules and regulations.

## **Inconsistent Complaint Investigation**

***As authorized under MISS. CODE ANN. § 73-7-7 (2) (1972), MSBC established rules and regulations around the reporting and investigation of alleged complaints against licensees of the Board. However, the regulations adopted by MSBC have created an inconsistent complaints investigation process. It could be prudent to revise the Board's policy regarding complaint investigations to prevent potential inequitable and discriminatory investigations.***

As a component of its enabling statutes, MISS. CODE ANN. § 73-7-7 (2) (1972) grants MSBC the authority to conduct investigations into any potential breaches of Board rules and regulations.

MSBC has exercised this authority by creating a process for suspected violations to be reported to the Board. All complaints must be in writing and accompanied by an affidavit attesting to the

veracity of the alleged complaint. Once the complaint has been filed, its investigation is assigned to an administrative review committee to determine if the complaint is justified. This committee is composed of the Board attorney, the Executive Director, and either an investigator or the Board member from the district where the complaint originated.

After the completion of the investigation, the complaint will be presented to MSBC, at which time, the Board may:

- dismiss the complaint;
- admonish the accused in writing; or,
- initiate a formal complaint and notice of hearing.

According to interviews with the members of the Board and the agency's executive director, Board members are allowed to investigate all complaints as they see fit. For example, a Board member may investigate the complaint by him or herself, request an agency investigator assist in the investigation, or request assistance from the Executive Director or other agency staff.

While the existing Board policy for investigation of complaints allows Board members to conduct the investigations as her or she sees fit, the variability inherent in the existing policies increases the risk of inequitable investigation and potential discrimination and could open the Board up to potential litigation.

## **Issues with Conducting Hearings for Adjudicating Complaints and Violations**

***MSBC does not schedule a regular, standard time to hold hearings. As a result, according to MSBC staff, a hearing had not been held to adjudicate violations and complaints in at least the three years prior to November of 2020, and only three hearings have been held since.***

In the event a hearing must be held to adjudicate a complaint or violation, MSBC may hold the hearing during the course of a regularly scheduled Board meeting, or call a special Board meeting for such an occasion.

Since the mandate of MSBC is to ensure the health and safety of the public through inspections and investigation of complaints of licensee malpractice, it is important that MSBC allows time to hear the results of these investigations and adjudicate any appeals to inspection violations that may occur as a result of this mandate.

Similar boards accomplish this task by scheduling time as necessary for hearings with the same frequency as their business meetings. For example, while the Board of Nursing holds its regular business meeting every other month, it also schedules a meeting for hearings, if one is necessary, in the two days prior to its next Board meeting. The PERS Board also regularly schedules time well in advance for potential claims hearings at the same level of frequency as the Board's regular meetings.

MSBC's counsel has explained to the Board that repercussions for violations are not enforceable without due process, so the licensee may have the opportunity to appeal any violations. However, the

meeting minutes show that MSBC only held one special Board meeting for the purpose of adjudicating two complaints, on November 9, 2020, and also held a hearing for the purpose of adjudicating complaints during its regularly scheduled meeting on September 27, 2021. The hearings at the special board meeting in November 2020 were the first hearings held by the Board within the last three years.

MSBC has resumed holding hearings as of September 27, 2021, but has failed to schedule and hold adjudication hearings on a regular basis.

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## Issues with Financial Management and Controls

This section discusses MSBC's:

- maintenance of a fund balance;
- operation of vehicles;
- segregation of duties; and,
- reimbursement of per diem, meals, and travel.

### Maintenance of a Fund Balance

**As of June 30, 2021, the Board had an ending cash balance of approximately \$2.1 million. Key factors contributing to this balance include the Board collecting more funds from fees and fines than necessary to cover the Board's cost of operations, and the Board expending less funds than anticipated due to employee vacancies. Maintaining a large cash balance while continuing to collect fees and fines could undermine licensees' and the public's trust in the Board.**

As described on page 6, MSBC is a special fund agency that is supported through funds collected from its licensees. Unlike agencies that receive support from the state's general fund, any funds collected by the agency, but not expended in the operation of the agency, generally remain within the agency's accounts at the end of the fiscal year. As of June 30, 2021, the MSBC had an ending cash balance in its accounts of approximately \$2.1 million.

The balance remaining at the end of FY 2021 is not the result of a difference in only FY 2021's operations but a summation of all the differences between MSBC's collections and expenditures over time.<sup>4</sup> For example, over the last five fiscal years (FY 2017 through FY 2021) MSBC's annual revenue collections have averaged approximately \$900,000 while its appropriated spending authority (the amount of funds MSBC is legally allowed to spend during a fiscal year as directed by the legislature) has averaged only approximately \$774,000.

The difference between funds collected and the Board's actual cost of operations is one factor that has contributed to the large cash balance currently maintained by MSBC. However, while MSBC has collected more revenues over the last five fiscal years than it was appropriated to spend, PEER analysis of the licensee fees and fines structures, approved by MSBC, shows these figures are in line with those of agencies in the surrounding states.

As a part of the appropriations process, state agencies must budget projected expenditures for personnel salaries and benefits. Budget guidelines require the submitted budgets to account for full funding of these categories for all authorized agency PINs.

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<sup>4</sup> Also, during FY 2002 the Legislature transferred approximately \$500,000 of the Board's cash balance to a Budget Contingency Fund as part of H. B. 1317 (2002 Regular Session), which transferred enumerated special funds to the contingency fund to provide monies necessary to help balance the general fund budget.

Subsequent appropriations by the Legislature are also based on these full funding figures. As such, any time an agency has a vacancy in one or more PINs during a fiscal year, the funds allocated for that position, unless repurposed for other expenditures, may remain unspent, creating a residual fund balance.

For the period reviewed (FY 2017 - FY 2021), MSBC's expenditures averaged approximately \$574,000. This figure is approximately 26% lower than the agency's average appropriated authority for the same period. According to staff of the Mississippi Legislative Budget Office (LBO), another contributing factor to the cash balance maintained by MSBC is employee vacancies.

For example, at the August 9, 2021, meeting, Cornerstone Consulting presented MSBC with information related to its FY 2022 budget. Projections provided by Cornerstone estimated potential savings (amounts below projected expenditures) of approximately \$26,000 would be generated by MSBC vacancies over the first two months of FY 2022 (July and August 2022).

While MSBC should strive to efficiently expend revenues entrusted to it, licensees should have an expectation that any fees and fines collected by MSBC will be expended for the efficient and effective accomplishment of the agency's mandate and to fund its operations. Maintenance of a large cash balance could serve to undermine the licensees' trust in the agency and could create a hesitancy for licensees' payments of future fees and fines.

## Operation of Vehicles

**MSBC has not assessed its own efficiency in the operation of inspector vehicles to maximize its financial resources. Using FY 2021 data, PEER estimates that if the Board used state-owned vehicles for its inspectors instead of reimbursing them for personal vehicle use, it could potentially save approximately \$11,000 per year.**

As a special fund agency, MSBC is funded by fees paid by its licensees. MSBC licensees should have an expectation that the Board expends funds it receives in a manner that most efficiently and effectively accomplishes the duties of the Board and its regulation of the industry. As a component of its mandate, MSBC is tasked with conducting inspections of the salons and schools regulated by the Board. For more information on inspections, see page 20.

Currently, inspectors for MSBC utilize their personal vehicles to accomplish travel for inspections, and receive reimbursement for this travel through the use of the state's Trip Optimizer system run by DFA's Bureau of Fleet Management (BFM).

In addition to providing oversight of the Trip Optimizer system, BFM also makes available tools and information regarding potential cost savings that agencies could accrue through the use of state fleet vehicles.<sup>5</sup> The Commuter Mileage Calculator tool, available on

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<sup>5</sup> A "fleet vehicle" is a vehicle purchased by the state government and used by state agencies to carry out their respective missions with funds allocated by the Legislature. (PEER Report #613, page 5)

the DFA website, compares the estimated cost per mile of driving a state vehicle to the estimated cost per mile of driving a personal vehicle and receiving reimbursement through Trip Optimizer. The Commuter Mileage Calculator also produces an estimate of overages or savings of utilizing a state-owned vehicle.

The Commuter Mileage Calculator tool, when used to analyze the FY 2021 travel of the three current MSBC inspectors,<sup>6</sup> showed that use of a state-owned vehicle would have resulted in a combined estimated cost-savings of over \$11,000 per year. Fleet vehicles are estimated to have a useful life of 7 years, and as such, projections of cost-savings for three inspector fleet vehicles could be over \$79,000 over seven years. This is a generalized conclusion, and projected cost-savings or overages would be specific to the type of vehicle purchased, as well as changes in mileage traveled by inspectors and other factors. BFM provides consultation on selecting vehicles that best suit an agency's needs. While the projected cost savings above do not include the purchase price of any fleet vehicles, there are potential cost-savings that could be recognized by the agency through the use of fleet vehicles.

## Segregation of Duties

**Weaknesses in the Board's segregation of duties compromise the accuracy and completeness of the Board's accounting records.**

According to the American Institute of Certified Public Accountants (AICPA),<sup>7</sup> *segregation of duties* is a type of internal control designed to prevent fraud and error by ensuring that two or more individuals are in charge of separate parts of any given critical function.

In other words, more than one person should oversee critical Board functions to avoid a single person committing fraud or error. MSBC's lack of appropriate practice of segregation of duties creates an opportunity for fraud or error to occur.

### Employee Travel Reimbursement

***In FY 2021, one employee assisted in compiling 33 employee travel reimbursements, and also served as the reviewer and final approver of those reimbursements.***

To maintain proper segregation of duties, state agencies should require a supervisor or other agency employee to approve travel expense reimbursements prepared by agency staff before it is submitted for payment. This policy would help to mitigate the risk

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<sup>6</sup> Annual travel mileage was determined by reviewing travel reimbursements for FY 2021. For two inspectors, 12 months of travel data was input into the "Commuter Mileage Calculator," while one inspector's estimate was based on an annualized average of 10 months of travel data.

<sup>7</sup> Founded in 1887, the AICPA represents the CPA profession nationally regarding rule-making and standard-setting and serves as an advocate before legislative bodies, public interest groups, and other professional organizations. The AICPA develops standards for audits of private companies and other services by CPAs, provides educational guidance materials to its members, develops and grades the Uniform CPA Examination, and monitors and enforces compliance with the profession's technical and ethical standards.

of an employee being reimbursed for travel expenses in excess of actual expenses incurred.

Thirty-three invoices that were compiled and submitted for employee travel expense reimbursement<sup>8</sup> were only reviewed by the employee that assisted in their completion. This is a violation of segregation of duties.

MSBC has a policy in place to mitigate this specific risk associated with employee travel reimbursement. The MSBC travel reimbursement form contains spaces for the employee requesting reimbursement, the agency employee who has verified the information contained within the form, and the agency employee charged with final approval to sign.

However, these invoices demonstrate a breakdown in implementation of the procedures MSBC has in place to ensure enforcement of internal controls regarding employee travel reimbursement and could potentially increase the risk of over-reimbursement or reimbursement of fraudulent expenditures.

## **Licensee Payment Processing**

***Board staff does not follow Board policies that require two employees to record contents of daily mail, including licensee payments.***

As defined under MISS. CODE ANN. § 27-103-103 (2) (1972), MSBC is considered a special fund agency because its operations are solely funded through money received from its licensees for various reasons (e.g., license renewal fees, testing fees, fines assessed during salon inspections). Subsequent to a change in policy during FY 2017, MSBC accepts licensee payments through an online portal as well as by personal check, money order, or cashier's check delivered by mail or in person. As such, strong internal controls should establish policies that ensure that all payments received by mail and in person are recorded and posted to the correct licensees' accounts.

MSBC has a policy in place to help mitigate risks associated with licensee payment processing. This policy requires two employees to open and record the contents of mail received by the agency daily. This record includes a list of all licensee payments received and can be utilized to verify the posting of payments to licensee accounts. This policy helps to mitigate the risk of a licensee payment being mishandled or misappropriated.

However, in an effort to expedite this daily task, the checks and other payments received are divided between two employees who each compile a list separately. The separate lists are then combined into a master file.

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<sup>8</sup> Under MISS. CODE ANN. § 25-3-41 (1972), officers and employees of Mississippi can be reimbursed for expenses incurred while traveling for approved state business (e.g., hotel rooms for overnight stays, mileage reimbursement for business use of personal vehicle). Guidelines for compliance with this statute are contained in DFA's *State Travel Policy Rules and Regulations*.

While this process may lead to quicker processing of licensee payments, it represents a breakdown in implementation of the procedures MSBC has in place to ensure enforcement of internal controls regarding licensee payment processing. This breakdown could potentially increase the risk of non-posting of licensee payments or fraud.

## **Depositing of Licensee Payments**

***In the event of one staff member's absence, another staff member performs both the posting of licensee payments in the Board's system and the depositing of those payments.***

In addition to the controls established above, strong internal controls should establish policies and procedures that ensure all payments received from licensees are deposited into MSBC's accounts.

MSBC's current policies and procedures dictate that once licensee payments are recorded and posted to the licensees' accounts, a report is run from MSBC's licensing system showing the total dollar amount of payments posted for each day.

After the completion of this task, a second MSBC employee electronically deposits the payments into MSBC's bank account. Once all payments have been electronically deposited, the bank's system generates a report detailing the number of items deposited and a total dollar amount for all deposits.

The report from MSBC's system and the report from the bank's system are compared to ensure that the amounts of payments posted to licensees' accounts coincide with the amount of money deposited into MSBC's bank account. Any discrepancies are researched and corrected.

In the event that one of the employees tasked with these facets of MSBC's licensee payment processing is absent from work, current MSBC policy states that the employee present will conduct the posting of payments to licensee accounts and the Executive Director will be responsible for the processing of the electronic deposits.

MSBC staff directly responsible for these two tasks reported that in the event one of them is absent, the other performs both payment posting and depositing. This represents a breakdown in implementation of the procedures MSBC has in place to ensure enforcement of internal controls regarding the depositing of licensee payments.

Having one employee complete both components of this process increases the risk that payments received from licensees will not be posted and deposited.

## Reimbursement of Per Diem, Meals, and Travel

In FY 2021, MSBC Board members requested reimbursements for per diem, meals, and travel in accordance with state statutes. However, MSBC Board member policies for claiming such reimbursements are inconsistent and insufficient for expending public funds in a cost-effective and prudent manner.

### Issues with Per Diem

*Without specific policies that define Board-related activities and requirements regarding eligibility for per diem, certain payments to Board members could be seen as an inappropriate use of public funds.*

MISS. CODE ANN. § 25-3-69 (1972) states:

*Unless otherwise provided by law, all officers and employees of state agencies, boards, commissions, departments and institutions authorized by law to receive per diem compensation for each day or fraction thereof occupied with the discharge of official duties shall be entitled to Forty Dollars (\$40.00) per diem compensation. When the Governor, Lieutenant Governor or Speaker of the House of Representatives appoints a person to a board, commission or other position that requires confirmation by the Senate, the person may receive per diem compensation for the performance of official duties before such appointment is confirmed by the Senate, as such per diem compensation is authorized under this section.*

However, there is no Board policy that defines “discharge of official duties” or the specific amount of time members must be engaged in those official duties to be eligible for per diem.

### **Examples of Questionable Per Diem and Other Payments**

In reimbursement requests submitted by the Board in FY 2021, Board members inconsistently claimed per diem for Board activities. For example, one member requests and receives per diem for every meeting, and also for every two hours of work completed for the Board, even if the time spans over multiple days. Another member requests and receives per diem for every email, phone call, and meeting in which they participate. In FY 2021, a member using the first method collected \$3,560 in per diem, while a board member using the second method received \$4,760 in per diem. While both are discharging their official duties and requesting per diem true to the letter of the law, the lack of consistency and formal policy risks abuse. Without specific policies for Board activities and requirements regarding per diem, payments to the Board could be an inappropriate use of public funds.

Also, from PEER’s review of FY 2021 documentation, 10 instances occurred in which a quorum of the Board requested per diem and/or reimbursement for Board activities but no recorded minutes documented that a meeting occurred. Requests for reimbursement for these meetings (including per diem, travel, and

meals) totaled approximately \$2,600. For more information on missing meeting minutes, see page 15.

### **Issues with Meal Reimbursements**

***In FY 2021, Board members requested and received \$6,406 in meal reimbursements without submitting receipts, against DFA recommendations.***

DFA has provided guidelines for state agencies regarding reimbursement of employee travel expenses in its *State Travel Policy Rules & Regulations*. Regarding meal allowances, the *State Travel Policy* states:

*Officers and employees of the state and political subdivisions shall be reimbursed the actual cost of meals incident to official travel, not to exceed the daily maximums for the specific location of assignment. Section 25-3-41(4) does not require receipts for meal reimbursements; however, DFA recommends that agencies and governing authorities require them to sufficiently document reimbursements. However, it is not necessary for agencies to include these receipts with the Travel Voucher when submitting for reimbursement to the DFA Office of Fiscal Management.*

MSBC Board members requested reimbursement for meals on 132 occasions, and in 118 instances requested the maximum amount of daily food allowance, without receipts, of \$46 plus the maximum allowable amount of 20% for tips, \$9.20, for a total of \$55.20 per day. While this method of reimbursement is allowable under DFA policy, provision of receipts by Board members for future meal reimbursements could help to ensure efficiency and fiscal responsibility in the execution of meal reimbursement policy. In FY 2021, these reimbursements totaled \$6,405.88.

Of these meal reimbursements, 31 instances were for members who reside in the greater Jackson metro area on days in which the Board met in Jackson and were often provided lunch. While not a direct violation of DFA policy, a member receiving a reimbursement for a meal that takes place after the conclusion of Board business in the area where they reside may be an inefficient use of public funds.

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## Other Administrative Issues

This section discusses issues regarding:

- the lack of expertise to perform critical Board functions;
- oversight of Executive Director leave and comp time; and,
- issues related to agency working environment.

### Lack of Expertise to Perform Critical Board Functions

**Due to a lack of expertise on staff, the Board has increasingly relied on contractors to perform several core administrative tasks (e.g., budget development, accounting, IT), which could result in an inefficient use of funds and potentially an over-reliance on contractors to perform critical Board functions.**

MSBC lacks expertise on staff to perform critical Board functions and relies on contract work and consultants to perform a multitude of tasks, ranging from large projects (e.g., the creation of a new licensing system) to smaller, administrative functions (e.g., timecard approval). An agency should fill positions that perform core administrative functions with qualified employees. When MSBC staff cannot perform core administrative functions, the Board contracts for such functions and therefore loses its ability to perform these functions internally.

### MSBC Use of Contractors in Lieu of Full-Time Staff

In FY 2021, the Board spent over \$50,000 on contractual services for IT support, accounting, consulting, staffing, and database management. Because MSBC intends to continue contracting for such services rather than filling these competencies with full-time staff, MSBC has reduced its internal capacity to perform core functions of the agency.

MSBC's largest provider of contractual services is Cornerstone Consulting Group, which has, since 2017, assisted the Board with developing and submitting the annual budget requests to the Legislature. In 2021, MSBC expanded Cornerstone's contract to include an operational review of the Board's organizational structure and staff job descriptions. In March 2021, the Board also contracted with Cornerstone Consulting to handle its accounting functions after the Board's previous accountant/auditor position became vacant at the end of February 2021.

While MSBC's contracting began as stopgap measures to complete tasks performed by positions that became vacant, it has become a significant part of the Board's operations, with the Board restructuring its agency leadership and staff responsibilities on the assumption that it will continue to rely on contractors to perform core functions in perpetuity. In particular, the Board's new structure adjusts the job responsibilities for the employee PIN traditionally reserved for an accountant with a new management position. While involved in oversight of many of the agency's financial functions, this position now has minimal involvement in the most critical functions that are essential to the agency's

accounting, and will continue to contract with Cornerstone Consulting to accomplish the Board's accounting functions. The combination of a lack of institutional knowledge and experience, difficulty finding qualified employees, and limitations to the Board's spending authority has resulted in MSBC relying on contract work to complete basic and essential functions of the Board.

### **Agencies' Use of Contractors for Similar Services**

MSBC is not the only state agency with a similar reliance on contract work. The Board's representative from Cornerstone Consulting, who acts as its primary contract worker and consultant on budget creation, accounting, organizational restructuring, and other administrative functions, stated that at least 17 other state agencies utilize its services on a regular basis, primarily to assist with budget creation and training on and operation of the state's accounting system (i.e., MAGIC).

Cornerstone Consulting is acting as a pseudo-shared services agency, and each board that utilizes its services has a separately negotiated contract. In FY 2021, Cornerstone Consulting Group's contract amount was approximately \$27,000. Another state agency contracted with Cornerstone Consulting for similar accounting and ad hoc services for approximately \$20,000 during the same period.

With at least 17 agencies contracting these types of services, the amount of money being paid to Cornerstone on an annual basis by the state government could be significant. The result could be an inefficient use of funds, as it has the potential to cost the state more than if those contracts were negotiated together, or if the state had a governmental alternative.

### **Oversight of Executive Director Leave and Comp Time**

**From March to September 2021, the Executive Director requested and received 142 hours of comp time without approval by the appointing authority (i.e., the Board) as required by state law. In addition, the Executive Director did not request prior approval for comp time, which is generally accepted practice.**

MISS. CODE ANN. § 25-3-92 (1972) states that "When, in the opinion of the appointing authority, it is essential that a state employee work after normal work hours, the employee may receive credit for compensatory leave." The responsibility of approving compensatory leave, or comp time, is the sole responsibility of the appointing authority, which, in the case of the MSBC Executive Director, is the Board itself.

Because the Executive Director serves at the pleasure of the Board, the only way to follow the proper chain of command in the process of approving an Executive Director's timecard would be for the Board to approve it. However, PEER's review of the Executive Director's timecards and requests for comp time showed that, while the Executive Director submitted comp time forms, there was no signature approval of those forms. From March to September 2021, the Executive Director requested and received 142 hours of

comp time without approval by the appointing authority (i.e., the Board) as required by state law.

Further, the Executive Director's manual timecards, which included comp time, were either approved by a subordinate of the Executive Director, or not approved by anyone. This method of approving comp time is contrary to state law, which requires that comp time be approved solely by the appointing authority. Further, the involvement of a subordinate in the approval of a supervisor's leave creates the risk of potential fraud and dishonest reporting in hours worked due to the increased pressure that could result from the nature of the two parties' relationship.

The state does not currently have a general policy regarding Executive Director comp time. It may be prudent to develop such a policy to avoid issues of this nature.

In addition to not receiving the required approval from the Board, the Executive Director did not submit comp time forms in advance of working additional hours. From March to September 2021, there were 12 instances in which the Executive Director received comp time on the same day in which comp time was also taken. As a result, comp time was requested without prior approval. While not prohibited by statute, according to the Mississippi State Personnel Board, generally accepted practice requires employees to give a 24-hour notice to their approval authority before earning comp time.

## Issues Related to Agency Working Environment

**Over the course of PEER's review of MSBC, it became evident that the Board is operating with personnel conflicts that may jeopardize the future ability of the Board to fulfill its statutory obligations.**

In early 2020, the former MSBC Executive Director left the Board for another job opportunity in the cosmetology industry. The Board was then tasked with finding a new Executive Director, and in the interim, elevated the most senior agency staff member to perform the functions of the Executive Director position. The State Personnel Board assisted with advertising the Executive Director vacancy.

In response to the recruitment efforts, the Board received approximately 40 applications from interested individuals. Of the applications received, the Board interviewed four applicants, and voted to hire the current Executive Director in June 2020. The current Executive Director has a background in government and public service (a key factor in the Board's final decision to hire her) and worked most recently at Medicaid before accepting the position. She is not licensed in any professions regulated by the Board.

## Board and Staff Dynamics Following the Executive Director Transition

According to relationship experts, the following characteristics contribute to good, healthy working relationships:<sup>9</sup> trust, mutual respect, mindfulness, welcoming diversity, and open communication.

Through observations and interviews with Board members and agency staff, PEER determined that the relationships between the Executive Director and some agency staff do not reflect the characteristics of good working relationships. Specifically, there is a lack of trust and mutual respect between the Executive Director and some agency staff, as discussed below.

- *Staff's perspective*—Some agency staff members believe the Executive Director has no discernable management style. They assert that the Executive Director is unfamiliar with the processes used to accomplish the Board's mission and has not taken the time to learn processes or rules surrounding the Board's regulatory mandate. They believe the Executive Director is not held accountable for her actions, and is not in full control of the office because of frequent absence during regular working hours. Some of the employees believe this unwillingness to learn and absenteeism has also become a part of the culture with new hires, and that the efficiency and cohesiveness of the workplace suffers for it.
- *Executive Director's perspective*—The Executive Director asserts that some agency staff are not receptive to feedback. She believes the staff is not respectful of her position as Executive Director and are resistant to her efforts to improve and change the administrative culture of the agency. She also believes that her words and intentions are frequently twisted by some staff members who seem to have a low opinion of her, and that there is a concerted effort to undermine her to the Board. She believes that Board members do not give enough attention to some of the staff members' disrespect of her and her authority. She maintains that she does all she can to improve relationships but does not see equal effort from some staff members.
- *Board members' perspective*—Board members have observed tension between the Executive Director and some staff members during Board meetings and have adjudicated multiple complaints from some staff members about the Executive Director. Board members maintain that the Executive Director is still adjusting and has made improvements to the office's operations, but recognize that the dynamics within the office must change in order for the Board to effectively accomplish its mission. While they agree that staff members should show the Executive Director the respect that her position is entitled, they also believe that she has mishandled personnel issues with some

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<sup>9</sup> Content Team, "Building Great Relationships," MindTools.com, accessed November 8, 2021, <https://www.mindtools.com/pages/article/good-relationships.htm>.

of the staff in the past and needs to be more intentional and accountable in her interactions with some staff. They believe she should take initiative as the leader to repair relationships and find ways to work with her staff, especially those whose job performance is otherwise excellent and vital to the Board.

Board members have counseled with the Executive Director during closed sessions in an effort to improve the working relationships and, to date, have observed few noticeable improvements. Given the small nature of the Board's in-office staff—i.e., seven employees—it is important that the working relationships are improved before experienced, tenured employees choose to leave the Board.

Additionally, while MSBC is ultimately responsible for the successful completion of the agency's mission, the day-to-day operations of the agency should be the sole responsibility of the Executive Director. PEER analysis of the Executive Director's manual timecards from March to September 2021 shows that of the agency's normal working hours (8:00 a.m. to 5:00 p.m.) during that time period, the Executive Director was not present in the MSBC office for approximately 285 hours, or 23% of the time. Of those hours, 228 hours were personal or compensatory leave, 49 hours were work-related travel, and 8 hours were remote work. Currently, MSBC does not have a policy for approving and conducting remote work. For more information on Executive Director compensatory time, see page 34. The Executive Director's presence in the office is integral to fulfilling their role of providing support and oversight to the staff, which ensures the office's ability to efficiently and effectively execute the Board's directives in accordance with established policies and procedures.

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## Overlap in the Scopes of Practice of Cosmetologists and Barbers

**The overlap in the scopes of practice regulated by MSBC and the Mississippi Board of Barber Examiners is significant and makes differentiating between the jurisdictions of the two boards difficult.**

The overlap between the legal definitions of barbering and cosmetology is so significant that it makes attempts to differentiate between the two difficult. State law limits the barber's practice to "the upper part of the human body" (MISS. CODE ANN. § 73-5-39 [1972]), while state law allows cosmetologists to perform their services "on a person's head, face, neck, shoulder, arms, hands, legs or feet for cosmetic purposes" (MISS. CODE ANN. § 73-7-2 [1972]). Exhibit 8 on page 39 compares the practices included in the legal definitions of cosmetology versus barbering. The main difference between the two boards is that MSBC also regulates the professions of manicuring and esthetics.

Some argue that cosmetology is a "broader" profession than barbering, and that barbers need their own board to ensure that the barbering profession is not lost. However, the mandates of these boards are the same: to protect the health and safety of licensees and consumers. The National Interstate Council of State Boards of Cosmetology (NIC) advises both professions, and also creates tests used nationwide for licensing in both professions. Because of these similarities, there are 31 states in which the professions of cosmetology and barbers are regulated by the same board.

**Exhibit 8: Comparison of Practices Included in Legal Definitions of Cosmetology and Barbering**

Practice	Cosmetology	Barbering
<b>Hair</b>		
Cutting	•	•
Trimming	•	•
Waving	•	•
Permanent waving	•	•
Straightening	•	•
Cleansing/shampooing	•	•
Bleaching	•	•
Tinting	•	•
Coloring/dying	•	•
Clipping	•	
Styling	•	
Arranging	•	
Dressing	•	
Curling	•	
Arching eyebrows	•	
Tinting eyebrows/eyelashes	•	
Removing superfluous hair with depilatories	•	
Shaving		•
Singeing		•
<b>Body applications</b>		
Antiseptics	•	•
Clays	•	•
Lotions	•	•
Manicuring/pedicuring	•	
Oils	•	
Powders		•
Cosmetic preparations		•

SOURCE: PEER analysis of MISS. CODE ANN. § 73-5-39 and 73-7-2 (1972).

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## Recommendations

1. To better reflect the professions it regulates, and promote continuity within the Board, the Legislature should consider amending MISS. CODE ANN. § 73-7-1 (1972) to:
  - a. reduce the Board members' experience requirement from 10 to 5 years and eliminate the age requirement;
  - b. restructure and expand the Board's membership. For example, the Legislature could consider a 7-member board including the following members:
    - i. two cosmetologists, at least one of which is a salon owner;
    - ii. one manicurist;
    - iii. one esthetician;
    - iv. one cosmetology school owner;
    - v. one member of the public not related to cosmetology or related professions; and,
    - vi. the State Health Officer, or his or her designee; and,
  - c. in restructuring the Board's membership, reconstitute the Board with staggered terms.

The Legislature should also consider the option of dissolving both the State Board of Cosmetology and the State Board of Barber Examiners, and create a single State Board of Cosmetology and Barbering. If the Legislature creates this board, its composition should reflect representation of all licensed professions. For example, the Legislature could consider a 9-member board including the following members:

- i. one cosmetologist, who is also a salon owner;
  - ii. two barbers;
  - iii. one cosmetology or barber school owner;
  - iv. one cosmetology or barber instructor;
  - v. one manicurist;
  - vi. one esthetician;
  - vii. one member of the public not related to cosmetology, barbering, or related professions; and,
  - viii. the State Health Officer, or his or her designee.
2. To eliminate the imbalance of licensing requirements for in-state and out-of-state applicants, the Legislature should consider:
    - a. amending MISS. CODE ANN. § 73-7-13 through 73-7-23 (1972) to remove the licensing requirement for English fluency. If the Legislature makes this amendment, the MSBC should offer the theory and state laws tests in all language versions offered by the NIC, creating more opportunity for success for Mississippi residents despite their level of English fluency. The Board should also consider similar possible accommodations for the practical exam, such as written instructions translated

- in multiple languages (e.g., translated with the assistance of the NIC);
- b. amending MISS. CODE ANN. § 73-7-13 through 73-7-21 (1972) to reduce the minimum age and education requirement to qualify for licensing to be comparable to contiguous state requirements. Qualifications would be no more than a 10<sup>th</sup> grade education, and a minimum age of 16 years of age to qualify for licensing; and,
  - c. amending MISS. CODE ANN. § 73-7-13 through 73-7-21 (1972) to allow aspiring practitioners to qualify for licensing examination through apprenticeship hours in lieu of schooling hours. To reflect laws in other states, the Legislature should require a minimum number of hours of training (e.g., apprenticeship hour requirements shall be no more than double the school hour requirements for any profession).
3. To reduce the Board's involvement in the day-to-day operations of the agency, the Legislature should consider amending MISS. CODE ANN. § 73-7-1 (1972) et seq., to formally create the position of Executive Director within the statute, and provide basic direction on the scope of the position's responsibilities (e.g., "Such director shall be the chief executive officer of the Board, give direction to the Board staff, manage the operations and administrative functions of the Board, such as the hiring of staff, and carry out the policies set forth by the Board.").
  4. The Legislature should consider amending MISS. CODE ANN. § 25-3-92 (1972) to require the Mississippi State Personnel Board to develop a policy for agencies that hire state service personnel regarding the appropriate process for the requesting, approval, and use of Executive Director compensatory time.
  5. The Board should address its deficiencies in core competencies by hiring qualified, full-time staff to accomplish such functions. In particular, the Board could benefit from hiring a full-time employee who serves as a business manager, performing multiple critical functions (e.g., creation of budget proposals, approval of travel expenses). If MSBC is unable to create and fill such a position, the Board should consult with DFA to increase the cost-effectiveness of its operations by determining an alternative solution to its current use of contractors (e.g., negotiating a single contract for similar critical functions routinely outsourced by MSBC and other agencies, boards, and commissions, rather than each entity procuring its own separate contract).
  6. In order to increase the efficiency of board meetings, the Board should:
    - a. require the Executive Director to provide meeting materials the week prior to the Board meeting;
    - b. begin meetings promptly and complete meeting agenda items in a timely manner;

- c. only conduct as many meetings for the amount of time necessary to oversee the management of the Board (not the day-to-day operations of the Board); and,
  - d. formalize and improve the general order of meetings. For example, the Board should strictly implement parliamentary procedure, with the president of the board effectively presiding over the meeting. If Board members are unfamiliar with parliamentary procedure, PEER recommends the board participate in a training on *Robert's Rules of Order*.
7. In consultation with Board counsel, the Board should review and develop operational policies and procedures that ensure compliance with all open meetings laws and regulations (e.g., record minutes for all meetings in which a quorum of the Board is present).
  8. To achieve its statutory mandate regarding annual inspections, the Board should:
    - a. evaluate inspector territories to factor for travel distance, and consider redrawing territories to make inspection quotas more feasible;
    - b. for better recruitment and retention of inspectors, provide flexible work schedules to inspectors, as allowed by state law;
    - c. create a more formal and equitable inspection schedule (i.e., ensuring that one salon is not inspected multiple times in one year, while another salon is not inspected during that year); and,
    - d. increase its number of inspectors to meet the statutory inspection mandate using available funds.
  9. To increase consistency within the enforcement process, the Board should:
    - a. amend the rules and regulations to better reflect the Board's actual practices (i.e., incorporate warnings for violations into the Board's penalty matrix), or enforce its rules and regulations for violation penalties as written;
    - b. revise its policy to ensure a uniform process of complaint investigation. This should at least include the recusal of board members who perform complaint investigations from the hearing to adjudicate the complaint, and would ideally give the responsibility to investigate complaints solely to agency staff (e.g., an inspector, or a trained agency staff member investigates the complaint); and,
    - c. schedule regular dates and times to hold hearings to adjudicate complaints.
  10. As a special fund agency, MSBC should develop plans to expend the licensees' funds held in reserve in an efficient and effective manner for the accomplishment of the agency's goals and objectives and for the benefit of its licensees. Part of the Board's plan for its reserves could include utilizing existing funds to hire staff that address the lack of expertise in core competencies, or

financially assisting licensees by covering their renewal fees for a period of time.

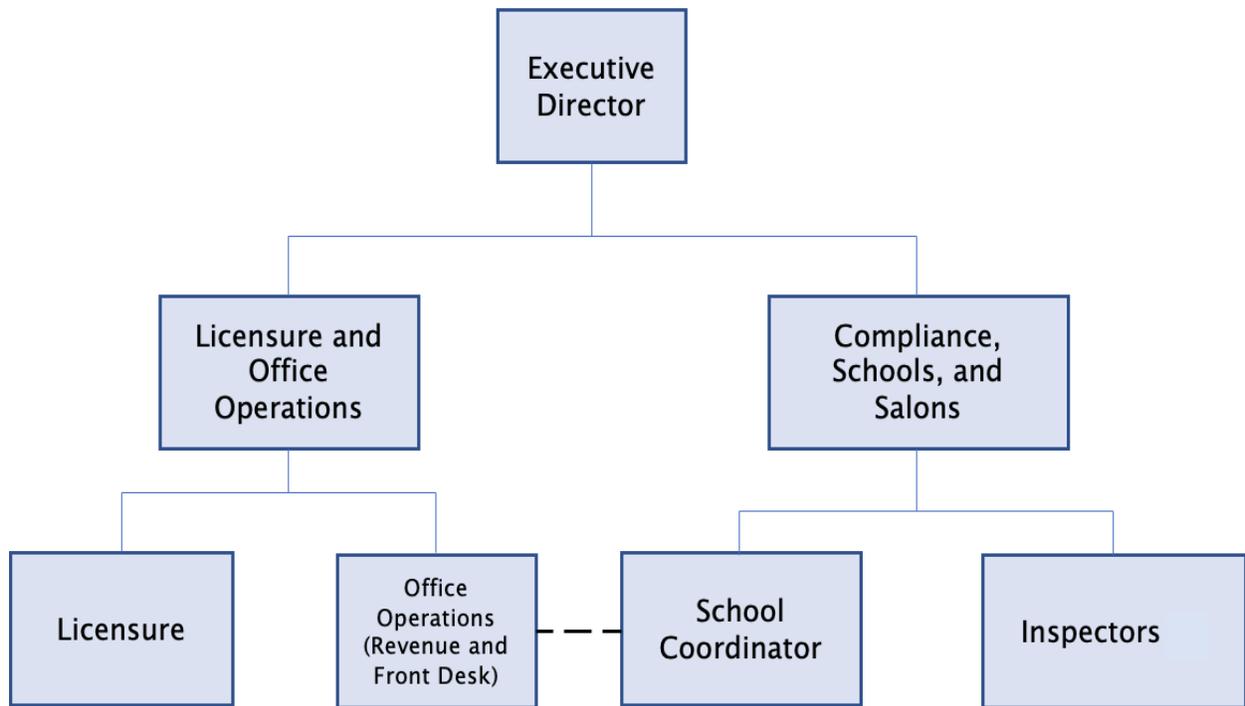
11. The Board should consult with the Department of Finance and Administration to determine whether fleet vehicles for inspectors would be more cost-effective than mileage reimbursement.
12. The Board should improve its financial management by adopting and enforcing policies and procedures that strengthen the agency's internal controls over the segregation of duties, with an emphasis in the areas of:
  - a. employee travel reimbursement approval;
  - b. licensee payment processing; and,
  - c. cash management.
13. The Board should create a written standard operating procedure for Board members requesting per diem to ensure consistency in the Board's use of funds. For example, these requests could be limited to times which the Board is working *in solido*, such as at Board meetings or hearings, or in scenarios where a significant amount of time is dedicated to the duties of the Board (e.g., observing a continuing education seminar or investigating a complaint).
14. To ensure transparency and the efficient use of public funds, the Board should:
  - a. submit itemized receipts with meal reimbursement requests, and,
  - b. ensure that its policies and procedures are in alignment with the Department of Finance and Administration's travel reimbursement guidelines and provide guidance to Board members on permissible meal reimbursement expenses (e.g., the Board shall not claim meals after conclusion of Board business when not traveling).
15. Regarding issues related to the agency's working environment, the Board should:
  - a. require all agency staff to participate in the following courses offered by the State Personnel Board:
    - i. "Workplace Collaboration;" and,
    - ii. "Crucial Conversations."
  - b. require the Executive Director to participate in the following courses offered by the State Personnel Board and the Council on Licensure, Enforcement and Regulation:
    - i. Overcoming the Five Dysfunctions of a Team;"
    - ii. "The Basic Supervisory Course;" and,
    - iii. "The Executive Leadership Program for Regulators."
  - c. seek mediation assistance from a human resources or counseling professional in order to provide leadership coaching and relationship-building skills.

If such efforts are not successful in addressing the working environment issues, the Board should consider taking

personnel actions to improve the agency's work environment and ensure the agency's sustainability.

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## Appendix A: MSBC Organizational Chart



SOURCE: Mississippi State Board of Cosmetology.

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## Appendix B: MSBC Revenues, Expenditures, and End-of-year Cash Balances for FYs 2019 through 2021

	FY22 Budget	FY23 Budget Request
Appropriation	829,606.00	
Salaries	538,930.00	711,071.00
Travel	87,500.00	95,000.00
Services	171,368.00	174,942.00
Commodities	36,750.00	36,750.00
Equipment	-	7,500.00
<b>TOTAL</b>	<b>834,548.00</b>	<b>1,025,263.00</b>

	FY21	FY20	FY19
Revenue Collected	939,174.00	895,571.00	973,112.00
FY21 Estimated Expenditures	889,459.00	FY20 Expenditures	FY19 Expenditures
	424,850.00	759,324.00	744,617.00
	68,385.00	399,465.00	364,336.00
	311,490.00	72,211.00	81,093.00
	54,346.00	71,332.00	83,510.00
	24,581.00	41,613.00	38,842.00
	883,652.00	-	12,316.00
		584,621.00	580,097.00
Unspent Budget	5,807.00	174,703.00	164,520.00
Ending Cash	2,156,923.00	1,486,385.00	1,991,705.00

SOURCE: Mississippi State Board of Cosmetology.

## Appendix C: Cosmetology Licensing Requirements by State

State	Governing Board	Age Prerequisite (years)	Education Prerequisite (grade)	Training Requirements
Alabama	Alabama Board of Cosmetology and Barbering	16	10	1,500 school hours OR 3,000 apprentice hours within 3 years
Alaska	Alaska Board of Barbers and Hairdressers	17	12	"Hairdresser" - 1,650 school hours OR 2,000 apprentice hours
Arizona	Arizona State Board of Cosmetology	18	10	1,600 school hours
Arkansas	Cosmetology Technical Advisory Committee (within Arkansas Dept. of Health)	16	10	1,200 school hours
California	State Board of Barbering and Cosmetology	17	10	1,600 school hours OR 3,200 apprentice hours
Colorado	Office of Barber and Cosmetology Licensure	16	None	1,500 school hours
Connecticut	CT Examining Board for Barbers, Hairdressers and Cosmeticians	16	9	1,500 school hours
Delaware	Board of Cosmetology and Barbering (within Delaware Division of Professional Regulations)	None	10	1,500 school hours OR 3,000 apprentice hours within 3 years
Florida	Florida Board of Cosmetology (within Department of Business & Professional Regulation)	16	12	1,200 school hours + "HIV/AIDS course"
Georgia	Georgia State Board of Cosmetology and Barbers	17	12	1,500 school hours OR 3,000 apprentice hours within 3 years
Hawaii	Hawaii Board of Barbering and Cosmetology	16	12	1,800 school hours OR 3,600 apprentice hours
Idaho	Idaho Barber and Cosmetology Services Licensing Board (within Division of Occupational and Professional Licenses)	16.5	10	1,600 school hours OR 3,200 apprentice hours

Illinois	Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Board (within Illinois Dept. of Financial & Professional Regulation)	18	12	1,500 school hours
Indiana	Indiana State Board of Cosmetology and Barber Examiners (within Indiana Professional Licensing Agency)	18	10	1,500 school hours
Iowa	Board of Cosmetology Art and Sciences (within the Iowa Dept. of Public Health)	16	10	2,100 school hours
Kansas	Kansas Board of Cosmetology	17	12	1,500 school hours
Kentucky	Kentucky Board of Cosmetology	18 + "good moral character"	12	1,500 school hours
Louisiana	Louisiana Board of Cosmetology	16	10	1,500 school hours
Maine	Barbering and Cosmetology Licensing Program (within State of Maine Office of Professional & Financial Regulation)	17	10	1,500 school hours OR 2,500 apprentice hours
Maryland	Maryland Board of Cosmetologists (within Division of Occupational and Professional Licensing)	17	9	1,500 school hours OR 24-month apprenticeship
Massachusetts	Board of Registration of Cosmetology and Barbering	17	10	1,000 school hours
Michigan	Board of Cosmetology (within Dept. of Licensing and Regulatory Affairs)	17	9	1,500 school hours OR 24-month apprenticeship
Minnesota	Minnesota Board of Cosmetology	17	12	1,550 school hours
Mississippi	Mississippi State Board of Cosmetology	17	12 + English fluency	1,500 school hours
Missouri	Missouri Board of Cosmetology and Barber Examiners (within the Missouri Division of Professional Registration)	17	10	1,500 school hours OR 3,000 apprentice hours
Montana	Montana Board of Barbers and Cosmetologists (within the Montana Dept. of Labor and Industry)	18 + "good moral character"	12	1,500 school hours

Nebraska	Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art (within the Dept. of Health and Human Services)	17	12	2,100 school hours
Nevada	Nevada State Board of Cosmetology	18 + "good moral character"	10	1,600 school hours OR 3,200 apprentice hours
New Hampshire	NH Board of Barbering, Cosmetology & Esthetics (within the Office of Professional Licensure and Certification)	None	12 + "good professional character"	1,500 school hours OR 3,000 apprentice hours within 3 years
New Jersey	New Jersey State Board of Cosmetology and Hairstyling (within the Division of Consumer Affairs)	17	12	1,200 school hours
New Mexico	New Mexico Board of Barbers and Cosmetologists (within New Mexico Regulation & Licensing Department)	17	10	1,600 school hours
New York	Dept. of State Division of Licensing Services	17	None	1,000 school hours
North Carolina	NC Board of Cosmetic Art Examiners	None	None	1,500 school hours
North Dakota	North Dakota State Board of Cosmetology	None	12	1,500 school hours
Ohio	Ohio State Cosmetology and Barber Board	16 + "good moral character"	10	1,500 school hours
Oklahoma	Oklahoma State Board of Cosmetology and Barbering	16	8	1,500 school hours OR 3,000 apprentice hours
Oregon	Oregon Board of Cosmetology (within Oregon Health Licensing Office)	None	None	1,800 school hours; 150 hours of safety/infection control + 100 hours of career development
Pennsylvania	Pennsylvania State Board of Cosmetology	16 + "good moral character"	10	1,250 school hours OR 2,000 approved apprentice hours in 8 months
Rhode Island	Board of Barbering and Hairdressing (within Division of Professional Regulation at Department of Health)	18 + "good moral character"; U.S. citizen/legal entry	12	1,200 school hours
South Carolina	South Carolina Board of Cosmetology (within South Carolina Dept. of Labor, Licensing and Regulation)	16	10	1,500 school hours

South Dakota	South Dakota Cosmetology Commission	18	12	1,500 school hours or apprenticeship
Tennessee	State Board of Cosmetology and Barber Examiners	16	10	1,500 school hours
Texas	Texas Advisory Board on Cosmetology (within Texas Dept. of Licensing and Regulation)	17	12	1,000 school hours
Utah	The Cosmetology and Associated Professions Licensing Board (within Division of Occupational and Professional Licensing)	17 + "good moral character"	None	1,600 school hours OR 2,500 apprentice hours
Vermont	Secretary of State Office of Professional Regulation	18	12	1,000 school hours OR 1,500 apprentice hours
Virginia	Virginia Board for Barbers and Cosmetologists (within Department of Professional and Occupational Regulation)	None	None	1,500 school hours OR 3,000 apprentice hours
Washington	Cosmetology, Barbering, Esthetics, Manicuring, and Hair Design Advisory Board (within Washington State Department of Licensing)	17	None	1,600 school hours OR 2,000 apprentice hours
Washington DC	The DC Board of Barber and Cosmetology (within the Dept. of Consumer and Regulatory Affairs)	18	10	1,500 school hours OR training and experience equivalent to 1,500 hours
West Virginia	West Virginia State Board of Barbers and Cosmetologists	18	12 + "good moral character"	1,800 school hours
Wisconsin	Cosmetology Examining Board (within Dept. of Safety and Professional Services)	18	12	1,550 school hours in no less than 10 months OR 3,712 apprentice hours + 288 hours of theory instruction
Wyoming	Wyoming Board of Cosmetology	16	10	2,000 school hours

SOURCE: PEER analysis of nationwide statutes governing cosmetology licensing.

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# Agency Response



December 8, 2021

Mr. Ted Booth, Executive Director  
Joint Committee on Performance Evaluation and Expenditure Review  
PEER Committee  
Post Office Box 1204  
Jackson, Mississippi 39215

## **HAND MAIL**

Dear Mr. Booth,

The Mississippi State Board of Cosmetology (MSBC or the Board) appreciates the in-depth analysis conducted by the staff of the PEER Committee. The very nature of comprehensive review of an entity and its operations is designed to reveal existing issues and provide opportunities to improve those issues. The Board of Cosmetology and its staff appreciate the in-depth assessment that was undertaken and appreciates having an opportunity to respond to those findings.

The Board will continue to work with the Executive Director to address and correct all of issues within its control that were identified within the assessment conducted by the PEER Committee.

## **Actions Undertaken to Improve Board Functions and Agency Operations**

Since an assessment of this nature is not designed to showcase the strengths of the agency and the improvements which have been made in agency operations, the Board of Cosmetology wishes to summarize some of the accomplishments which occurred during the last 18 months.

During the past year and a half, the following actions and accomplishments occurred:

- The Board recognized a need to review its rules, regulations, and procedures to improve its operational efficiency and to encompass changes in the state laws and within the cosmetology profession. A comprehensive review of all its regulations and procedures was undertaken during the past 18 months. The resulting modifications to its regulations have been submitted to the Occupational Licensing Regulations Committee and to the Secretary of State for approval. The Board is committed to continually perform activities of this nature.
- The Board had not held formal hearings for violations of the cosmetology laws, regulations and rules during the prior four-year period. During the past 18 months, the hearing process was re-established, and four hearings were scheduled and three were conducted. The fourth hearing was scheduled for January 31, 2022.
- Recognizing the number of fraudulent or potentially fraudulent applications being submitted for licensure, the Board has begun researching new licensing requirements which would require fingerprints be submitted by all applicants for identity verification.
- The Executive Director and the Board reviewed the entire operations of the agency and restructured the organization of the office. The new structure created separate divisions to improve office operations, address internal communications and employee morale, and enhance supervisory roles. Experienced and knowledgeable staff were selected to fill the newly created leadership roles. As a result of this review, the responsibilities of each staff member, including those performed by the Executive Director, were delineated, and procedures to strengthen internal controls over financial operations were developed.

- Through the initiative of the Executive Director, who recognized deficiencies within the existing, antiquated licensing system, which was not meeting the needs of the agency, a new licensing system was procured at the close of FY21. The new system will address the majority the licensing and investigative requirements of the agency, will assist to strengthen internal controls throughout the agency, and will provide additional reporting. The new system is targeted be fully implemented by the close of the current fiscal year.
- The Board has developed an Employee Handbook which includes guidance for communications between the staff and between the staff and Board members; establishment of office work schedules and taking and reporting leave; and, appropriate dress.
- In an effort to halt the high turnover and low morale that exists in the agency due to low salaries, efforts were made to increase staff salaries, improve or offer fringe benefits and improve the turn-around time for processing travel. Efforts to address the low salaries of the agency staff included allowing the employees to attend training classes which were eligible for benchmark salary increases and to utilize funds made available through the office restructuring to provide salary increases to existing staff.
- A line-item budget, by superior commitment, was adopted by the Board for FY22 to allow additional oversight by the Board and provide the staff guidance for expending the funds of the agency. The new budgeting model will allow the Executive Director to assume more authority over day-to-day operations without having routine expenditures to be approved by the Board.
- Equipment purchases were made to enhance office operations and to allow Board members comprehensive and timely access to information for items to be addressed during meetings and other activities.

#### **Response to Report Findings**

The Board reviewed the report and appreciates the in-depth review and analysis that and appreciates the in-depth review and analysis that was performed by the PEER Committee staff. The Board's response addresses the findings in the order they were presented and incorporates its responses to the recommendations within each segment presented.

### **Board Composition, Structure and Responsibilities**

#### **Board Composition and Structure**

The Board concurs with findings and recommendations concerning membership, staggered terms, and qualification requirements of the MSBC; however, the Board is unable to address these issues as they are outside of the purview of the Board.

#### **MSBC Responsibilities**

The Board acknowledges that it has been involved in decisions concerning agency operations in the past. This occurred, in part, to the high staff turnover including a vacancy in the Executive Director position. The fact that an internal agency budget had not previously been established also contributed the direction required by the Board in financial matters. Actions already taken to lessen the board member activity in agency operations and decision making include taking steps to reduce turnover, adopting written procedures to assign agency tasks to specific individuals and adopting an internal agency budget for FY22. The Board will consider expanding the delineation of duty assignments to include board member responsibilities.

During the past year, the Board has attempted to have meetings begin on time and to streamline the meetings. Actions taken have included requesting the agenda to be submitted to the members in advance and to provide documentation of all meeting items electronically. Laptops were purchased at the end of FY21 for this purpose; however, there have been technological issues associated with the implementation of this plan. Going forward, the Board will require that the agenda be finalized and distributed to the Board members and appropriate staff by the close of business on the Thursday immediately preceding the next Board meeting and the agency will work toward resolving the technological issues so all meeting materials can be reviewed prior to the actual board meetings. Additional steps that will be taken

include appointing a parliamentarian to enforce Roberts Rules of Order to assist in having the meeting run more efficiently and orderly.

The Board acknowledges that minutes of its meetings were not filed timely and its past attempts to rectify this issue were ineffective. Moving forward, the Board will enforce the statutory requirement that all Board minutes be finalized and recorded within 30 days of the conclusion of a meeting through appropriate personnel action, if needed, and will require that the Executive Director present the minutes to the Board for approval at the next regular scheduled Board meeting. After approval of the minutes, the Board will require the Executive Director to have the minutes immediately posted on the Board's website.

## **Regulatory Activities**

### **Licensing Process**

The Board concurs with findings and recommendations concerning age, education and English fluency requirements for its applicants; however, the Board is unable to address these issues as they are established by statute and are outside of the purview of the Board. Apprenticeships were created within the newly enacted uniform licensing laws and the Board will review its procedures concerning these requirements as part of its on-going assessment of its own rules and regulations.

### **Enforcement Process**

Due to closures of salons, schools, and the agency office during the COVID pandemic, the number of inspections conducted were lower than usual. Other factors effecting the low number of inspections included the difficulties of hiring inspectors due to the low salaries of these positions. The report indicated that the statutes allow for the Board to hire seven inspectors and it currently only has five positions. Although statute provides for additional inspectors, the agency's appropriation does not. In addition to being limited by the appropriation, the current salary scale of these positions makes it impossible to recruit and retain even five inspectors. In its last five legislative budget requests, the Board has asked for the salaries of its staff to be raised. The Board is extremely hopeful that when the State Personal Board's SEC2 initiative is fully implemented, it will be able to fill all its vacancies and retain a highly experienced staff. The Board will also review its budget and cash balances after implementing the new salaries under SEC2 to determine if its fees can support requesting additional inspector positions.

Actions taken by the Board to create a Compliance, Schools and Salons unit with an experienced employee serving as the Team Lead, is already showing improvement over the enforcement process. Procedures for supervising inspectors, scheduling inspections, and creating procedures which ensure Board policies are applied consistently, have been developed and implemented and the need for additional procedures will continue to be evaluated.

Future Board action will include a review of its current rules and regulations to determine when it would be appropriate and beneficial for issuing warnings instead of requiring fines to be imposed. If this action is adopted and approved by the external regulatory agencies, consistency in assignment of penalties will occur.

Although the Board has re-established its hearing process within the past 18 months, the Board will address this issue by adopting a policy to schedule regular, predetermined hearing dates for each calendar year prior to January 1 of each year and will publish the dates on its website.

## **Financial Management and Controls**

### **Fund Balance**

The Board has limited control over the amount of its fund balance. The statutorily established fees are required to be collected and the spending authority is provided by the legislature. A review of the last five legislative budget requests, reveals that the Board continually requests authority to expend the revenue collected and utilize its fund balances. During its appropriation hearings in January, the Board plans to request additional spending authority to address some of the items noted within the report, specifically concerning staffing issues.

### **Vehicles**

Although the cost savings will be much less than indicated in the report as the purchase price of the vehicles was not factored into the calculation provided by DFA, the Board concurs that it should contact DFA to determine if having state-owned vehicles for the inspectors would be beneficial to the agency. The purchase of the vehicles, if budget authorization is granted by the legislature, will also assist the agency in reducing its cash balance.

### **Segregation of Duties**

The agency has continually attempted to strengthen its internal control procedures. Hiring a third-party fiscal agent has provided a level of control, in addition to providing oversight for all agency fiscal operations, which was not previously available when the Board relied on staff for purchasing, accounting, and fiscal reporting and an external agency to perform payroll and timekeeping functions.

The controls over travel were strengthened in March of 2021 when an additional review all travel vouchers was implemented by the third-party fiscal agent who now reviews all travel vouchers for completeness and to ensure expenditures follow state rules and regulations. The current Employee Handbook does not contain travel procedures. The Board will develop a new manual section for travel to address consistency for board member per diem reimbursements; signatures of travelers and reviewers on travel vouchers; when overnight travel for inspectors can be approved; and, procedures for meal reimbursements.

During the course of the review conducted by PEER, it was noted that the policies and procedures adopted for processing payments received from licensees were not being followed within the office. Changes in assigned tasks appear to have occurred with staff terminations and reassignment of duties. The Team Lead over the Licensure and Office Operations will be tasked with additional oversight to ensure the existing policies are understood and are monitored.

### **Other Administrative Issues**

The agency continually attempted to hire and train employees to perform critical agency functions. Based on the salary structure of the fiscal position assigned to the agency, the ineffective results to legislatively reclassify the Accountant position over a period of four years, the resulting audit findings, and other factors, the Board determined that the agency would be best served by contracting some of its fiscal operations to a third-party. The agency retained its Accountant position and the employee in this position continues to be responsible for revenue received from licensures and serves as the agency point of contact for fiscal matters. The functions of the position were able to be expanded to provide additional oversight over licensing functions as the employee in this position is now serving as the Team Lead for the Licensure and Office Operations unit. This action has resulted in extremely strong internal controls that would otherwise be unavailable to an agency of this size.

The agency also does not have a position, nor a need, for information technology (IT) services to be performed in-house. During FY21 there was an increase in the number of IT contracts due to the procurement of a new licensing system. IT services were required from several different vendors to assess the agency's licensing requirements; to determine what equipment would need to be procured; to convert the agency's email addresses and hosting services; and, other associated services. The reliance on a multiple of vendors for IT services will be reduced once the new system is fully implemented.

As previously noted, the agency has implemented policies for reporting time worked and leave taken which has standardized the internal practices of the agency. The Board will review the policies and include a process for the Executive Director's work schedule to be reviewed and approved as necessary to address issues within the report. The Board acknowledges that the working environment at the agency has not been ideal. Creating the new organizational structure was undertaken in part to address this issue. The Board will continue to monitor the agency's work environment and will implement the recommendation to have its employees attend the classes suggested by PEER.

**Overlap Between Boards of Cosmetology and Barbers**

While there may be some overlap in the regulation of the two professions, the Board's research shows that while the theory test given by the national association (NIC) may be the same for cosmetology and barbers, the practical test does not contain the same skills.

The Board again wishes to express its thanks to the PEER Committee and its staff for the work that was performed during this review.

Sincerely,



Deborah Coker, MSBC Board President



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